

# Original Application

Opens Arms Care  
Corporation SW (Dexter  
Rd)

CN1711-034

**Michael D. Brent**

Partner  
mbrent@bradley.com  
615.252.2361 direct



November 15, 2017

Ms. Melanie M. Hill  
Tennessee Health Services & Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, Tennessee 37243

Dear Melanie:

Enclosed you will find an original, plus two copies, of a CON Application by Open Arms Care Corporation, for the replacement and relocation of an eight-person Intermediate Care Facility for Individuals with Intellectual Disabilities ("ICF/IID"). The current facility is located at 5350 Benjestown Road, Memphis (Shelby County), Tennessee 38127, and will be relocated to a lot of approximately 4.1 acres near the intersection of Dexter Road and Dexter Lane, in Shelby County, Tennessee. As we have previously discussed with your staff, given the nature of this application, and the fact this is a replacement of a facility that has been in operation nearly three decades by this applicant, we request that you give consideration to placing this application on the "Consent Calendar."

Should you have any questions or need anything further, please do not hesitate to contact me.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

Michael D. Brent

MDB/cae



**State of Tennessee**  
**Health Services and Development Agency**

Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243  
[www.tn.gov/hsda](http://www.tn.gov/hsda) Phone: 615-741-2364 Fax: 615-741-9884

**CERTIFICATE OF NEED APPLICATION**

**SECTION A: APPLICANT PROFILE**

**1. Name of Facility, Agency, or Institution**

Open Arms Care Corporation d/b/a Shelby County #3  
Name

Old Dexter Road  
Street or Route

Shelby  
County

Cordova  
City

Tennessee  
State

38016  
Zip Code

Website address: http://www.openarmscare.org

*Note: The Facility's name and address **must be** the name and address of the project and **must be** consistent with the Publication of Intent.*

**2. Contact Person Available for Responses to Questions**

Michael D. Brent  
Name

Attorney  
Title

Bradley Arant Boult Cummings LLP  
Company Name

mbrent@bradley.com  
Email address

1600 Division Street, Suite 700  
Street or Route

Nashville  
City

TN  
State

37203  
Zip Code

Attorney for Project  
Association with Owner

615-252-2361  
Phone Number

615-252-6361  
Fax Number

**NOTE:** **Section A** is intended to give the applicant an opportunity to describe the project. **Section B** addresses how the project relates to the criteria for a Certificate of Need by addressing: Need, Economic Feasibility, Contribution to the Orderly Development of Health Care, and Quality Measures.

Please answer all questions on **8 1/2" X 11" white paper, clearly typed and spaced, single or double sided, in order and sequentially numbered. In answering, please type the question and the response.** All questions must be answered. If an item does not apply, please indicate "N/A" (not applicable). **Attach appropriate documentation as an Appendix at the end of the application and reference the applicable Item Number on the attachment, i.e., Attachment A.1, A.2, etc. The last page of the application should be a completed signed and notarized affidavit.**

### 3. SECTION A: EXECUTIVE SUMMARY

#### A. Overview

Please provide an overview not to exceed three pages in total explaining each numbered point.

- 1) Description - Address the establishment of a health care institution, initiation of health services, bed complement changes, and/or how this project relates to any other outstanding but unimplemented certificates of need held by the applicant:

**Response:** Founded to address the needs of those moving out of large, state-run institutions, Open Arms Care Corporation, a Georgia nonprofit corporation ("Open Arms"), has 32 eight-resident homes, or Intermediate Care Facilities for Individuals with Intellectual Disabilities ("ICF/IID"), located in or near Chattanooga, Knoxville, Memphis, and Nashville, Tennessee and 9 four-resident ICF/IID homes in or near Chattanooga, Knoxville and Greeneville, Tennessee. Please see Attachment A.4 for a list of facilities operated by Open Arms in Tennessee. Through provider agreements with TennCare, Open Arms has been providing community-based facilities for individuals with intellectual and developmental disabilities for almost 30 years. This project proposes the relocation of the eight individuals in the Applicant's 8-bed ICF/IID facility located at 5350 Benjestown Road, Memphis (Shelby County), Tennessee 38127 to a newly constructed 8-bed ICF/IID facility in Shelby County, Tennessee. The Applicant leases the current facility from WCO AL DP, LLC ("WCO"), a non-profit housing organization that provides affordable and special needs housing. Please note that the Applicant does not know and has no input as to what WCO will do with the home in which the current facility is located if this application is approved. The Applicant proposes relocating the aforementioned 8 clients to a lot of approximately 4.1 acres, which does not currently have a separate street address, located on the southwest corner of the intersection of Dexter Road and Dexter Lane, Cordova (Shelby County), Tennessee 38016, (being the south half of the parcel described as Parcel 096507 00307C in the records of the Shelby County Tax Assessor). The proposed location is approximately 24.3 miles, or 33 minutes, from the current location of the ICF/IID facility. As a replacement facility, this project will not affect the number of ICF/IID beds in Shelby County. The Applicant currently has no outstanding but unimplemented certificates of need.

The facility will be built in a "duplex" configuration, with each half consisting of a one-story, fully accessible family homes of approximately 2,800 square feet, each with four bedrooms, combination living/dining room, kitchen, laundry, office, and associated storage areas. Each half will each have two large, fully accessible bathrooms, one half bath, and a residential sprinkler system. An 8-bed ICF/IID duplex style configuration provides the same services as two separate 4-bed ICF/IID homes, and is intended for the more medically fragile residents served by the Applicant.

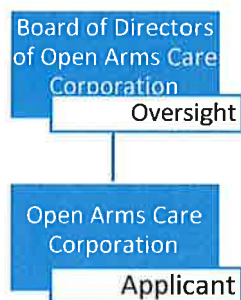
Depending on the resident and his or her medical needs, residents will receive assistance meeting hygiene requirements, specialized dietary services, physical therapy, and assistance with activities of daily living, as well as physical, occupational, and behavioral therapies. A resident's acuity level determines whether or not required physical therapy or occupational therapy takes place in the facility or in a different location. The overall goal is to provide the combination of an environment and services that will enrich their quality of life and sense of community. A typical day for a resident of an ICF/IID home begins with personal hygiene activities and breakfast, followed by programming such as habilitation and active treatment (physical therapy, vocational therapy, socialization, etc.), sometimes at a day center if prescribed in the resident's ISP. The habilitation care model for most Open Arms Care Corporation ("Open Arms") clients is to leave the residential facility on weekdays to attend habilitation and therapeutic programming according to an individual plan of care. This gives clients a more normalized routine akin to school or work attendance. The Applicant's day treatment facilities have special program enrichment spaces for therapies, which include but are not limited to, physical, occupational, recreational, social, family, artistic, hydro and Snoezelen (where clients are placed in a soothing and sense-stimulating environment) therapies that are not available in the group homes. Clients are generally at the day program for five to six hours each day.



The Applicant will be providing care to several medically fragile residents, who tend to require more hours from registered and licensed practical nurses. The Applicant will equip the proposed facility with wheelchairs required to facilitate some clients' mobility in addition to items such as positioning boards. The Applicant, however, notes that a client's changing condition or a new admission could require the Applicant to have equipment similar to that found in skilled nursing facilities such as hospital beds, wheelchairs, respirators, incubators and tube feeding equipment.

## 2) Ownership structure

**Response:** As shown in the chart below, Open Arms is a Georgia nonprofit corporation with no ownership shares or membership interests and is board-managed. Open Arms is owned by neither another entity nor by individuals. Instead, Open Arms has a board of directors, which consists of six individuals, who oversee the entity's affairs. Note that, unlike some multi-facility providers, each facility operated by Open Arms is operated directly by Open Arms, without the use of subsidiary entities. Please see the chart below illustrating solely the operation of Open Arms. Though Open Arms is a Georgia nonprofit corporation, the board of Open Arms is considering converting to a Tennessee nonprofit corporation. If the ultimate decision is to make such a conversion, a new Tennessee nonprofit corporation would be created and the existing Georgia nonprofit corporation would be merged into it, with the result being that Open Arms would be a Tennessee corporation. The laws of some states allow a simpler



process whereby a non-nonprofit corporation can change its domicile from one state to another, but that is not currently allowed for transitions from a Georgia to a Tennessee corporation.

## 3) Service area

**Response:** The service area is Shelby County, Tennessee

## 4) Existing similar service providers

**Response:** Open Arms is one of only a few ICF/IID providers in Tennessee, and the only such provider currently serving Shelby County.

## 5) Project cost

**Response:** As shown on the Project Cost Chart, the total cost is \$5,130,000, due to the requirements that the cost be based on the total lease costs over a 30 year period. However, the actual cost of the land, site improvements, and construction is less than half of that amount.

## 6) Funding

**Response:** As shown on the attached funding letter, Servis1St Bank will be the lender for the project, and has a long relationship as a lender for Open Arms projects.

7) Financial Feasibility including when the proposal will realize a positive financial margin

**Response:** As shown on the financial projections, as a relocation of exiting services, with existing residents, the project is anticipated to have positive financial results upon opening.

8) Staffing

**Response:** The Applicant currently employs a full staff at the facility to be relocated, as well as 7 other similar facilities in Shelby County. It is anticipated that all such staff members will transfer from the current facility to the replacement facility.

**B. Rationale for Approval**

A certificate of need can only be granted when a project is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care in the service area. This section should provide rationale for each criterion using the data and information points provided in Section B. of this application. Please summarize in one page or less each of the criteria:

1) Need

**Response:** The intent of this application is to relocate 8 individuals who currently reside in an Open Arms facility in Shelby County (the "Residents") to a new facility that the Applicant will construct if this Application is approved. The Residents' current home is a traditional wood frame residential home that was constructed almost 30 years ago and is no longer sufficient for the needs of Residents and staff. Having been in use for almost 30 years, it has become evident that staffing and Residents' equipment needs over this period have far exceeded the expected use for such structures, which are reminiscent of conventional family use houses. While the Applicant has maintained good conditions for compliance and safety, the structure experiences wear and tear commensurate with such lengthy use which results in ever increasing repair and maintenance costs as the structure continues to age.

The proposed construction of a new facility is also in response to Residents' increased acuity. The Applicant must meet the increased needs of aging long term Residents as well as new admissions with higher levels of acuity in a facility that was not built with such individuals in mind. The Applicant wants to construct homes with floorplans, materials and technologies with the higher level of care required by these Residents in mind, as the Applicant did with clients admitted in connection with closure of Green Valley Development Center. The Applicant's current facility is also located in a neighborhood that has experienced a substantial shift in character since the facility opened. Residents will therefore also benefit from a more suitable, less commercial neighborhood. Finally, impending changes to the fire safety code will require substantial expenditures to retrofit the current facility with sprinkler, electrical and alarm upgrades, and, given the age and undesirable location of the current facility, the Applicant finds it more prudent to begin to transition residents to a new facility constructed pursuant to the new requirements and modern technology instead of spending substantial sums on the current facility. As with most of the Applicant's facilities in similar circumstances, the proposed relocation and construction of a new facility is part of the Applicant's long term plan to do the same with its other aging ICF/IID facilities.

2) Economic Feasibility

**Response:** The facility's estimated cost of construction is shown on the attached exhibits. Please see Section C, Economic Feasibility, for additional information about costs for land, site preparation, and other costs. The project financing will include a commercial loan to the Landlord (please see Attachment C. Economic Feasibility – 2) that will be sufficient to purchase the land and construct the new facility.

Because of the Applicant's extensive experience serving individuals with intellectual and developmental disabilities and its solid working relationship with DIDD, the Applicant believes that, in addition to being economically feasible, this project will build upon lessons learned building other ICF/IID homes in recent years, enabling it to continue to better residents' quality of life.

3) Appropriate Quality Standards

**Response:** With almost 30 years of experience providing community-based facilities for individuals with intellectual and developmental disabilities, the Applicant is well-versed in what is required to ensure quality services are provided to residences and that its facilities successfully undergo agency surveys with few to no violations. Further, the Applicant current and shall continue to meet all standards imposed on it by licensing and regulatory boards to which it is subject.

4) Orderly Development to adequate and effective health care

**Response:** The proposed relocation will not result in an unnecessary increase in use of healthcare services as the number of individuals currently served in Shelby County (provided the Applicant remains the sole ICF/IID facility provider) will not change as a result the approval of this Application, as current recipients will just be moved to a new location. Further, approving this Application ensures that residents are receiving care provided in modern setting, in a home constructed with what are likely much more robust disability accessibility requirements, reflecting a deeper understanding of the challenges faced by the disabled and the ways in which homes can be modified in response. The more modern floorplan of the new facility will also assist in meeting the healthcare needs of the residents.

**C. Consent Calendar Justification**

If Consent Calendar is requested, please provide the rationale for an expedited review.

A request for Consent Calendar must be in the form of a written communication to the Agency's Executive Director at the time the application is filed.

**Response:** A letter addressed to the Agency's Executive Director containing the Applicant's request to be added to the Consent Calendar and the justification for an expedited review is attached hereto as Attachment A-3C. To summarize, this Application does not seek to add any ICF/IID beds; rather, it proposes relocating existing ICF/IID beds following construction of a new ICF/IID facility to benefit residents and the community.

#### 4. SECTION A: PROJECT DETAILS

##### A. Owner of the Facility, Agency or Institution

Open Arms Care Corporation	(615) 254-4006	
Name	Phone Number	
6 Cadillac Drive, Suite 350	Williamson	
Street or Route	County	
Brentwood	Tennessee	37027
City	State	Zip Code

##### B. Type of Ownership of Control (Check One)

- |                                 |          |                               |       |
|---------------------------------|----------|-------------------------------|-------|
| A. Sole Proprietorship          | _____    | F. Government (State of TN or | _____ |
| B. Partnership                  | _____    | Political Subdivision)        | _____ |
| C. Limited Partnership          | _____    | G. Joint Venture              | _____ |
| D. Corporation (For Profit)     | _____    | H. Limited Liability Company  | _____ |
| E. Corporation (Not-for-Profit) | <u>X</u> | I. Other (Specify) _____      | _____ |

Attach a copy of the partnership agreement, or corporate charter and certificate of corporate existence. Please provide documentation of the active status of the entity from the Tennessee Secretary of State's web-site at <https://tnbeartn.gov/ECommerce/FilincSearch.aspx>. **Attachment Section A-4A.**

**Describe** the existing or proposed ownership structure of the applicant, including an ownership structure organizational chart. Explain the corporate structure and the manner in which all entities of the ownership structure relate to the applicant. As applicable, identify the members of the ownership entity and each member's percentage of ownership, for those members with 5% ownership (direct or indirect) interest.

**Response:** Founded to address the needs of those moving out of large, state-run institutions, Open Arms Care Corporation, a Georgia nonprofit corporation ("Open Arms" or the "Applicant"), has 32 eight-resident homes or, Intermediate Care Facilities for Individuals with Intellectual Disabilities ("ICF/IID"), located in or near Chattanooga, Knoxville, Memphis, and Nashville, Tennessee. Please see Attachment A.4 for a list of facilities operated by Open Arms in Tennessee. In addition, Open Arms has recently opened 9 four-resident homes in Greene, Knox and Hamilton Counties (pursuant to CONs approved by the HSDA in 2016), to help satisfy the need for such facilities as a result of the closure of Green Valley Development Center in East Tennessee. Open Arms has no owners or members and is governed by a six-person board of directors consisting of Robert Taylor (Chair), Jane Buffaloe, Mary Ellis Richardson, Sandy Wybel, John Crawford and Cherrie Clark.

In 1988, founding board members of Open Arms identified the need to build community facilities for individuals who were moving out of large, state-run institutions for individuals with intellectual and developmental disabilities in the state of Tennessee. Certificate of Need applications were submitted and approved and Open Arms Care (then known as Rebound Care Corporation) began offering services once it was approved for 256 beds across the state

of Tennessee. (Source: <http://openarmscare.org/our-history>.) Through provider agreements with TennCare, Open Arms has been providing community-based facilities for individuals with intellectual and developmental disabilities for almost 30 years. Open Arms has no ownership shares or membership interests and is board-managed. Please also see Attachment A-4A.

**5. Name of Management/Operating Entity (If Applicable)**

Integra Resources, LLC

Name

1222 16th Avenue South, Suite 300

Street or Route

Davidson

County

Nashville

City

Tennessee

State

37212

Zip Code

Website address: Not Applicable.

***For new facilities or existing facilities without a current management agreement, attach a copy of a draft management agreement that at least includes the anticipated scope of management services to be provided, the anticipated term of the agreement, and the anticipated management fee payment methodology and schedule. For facilities with existing management agreements, attach a copy of the fully executed final contract. Attachment Section A-5.***

**Response:** Please see Attachment A-5. Please note that the management agreement is specific to the lease agreement such that a new management agreement will be executed if the application is approved, though the only differences between the current management agreement and the proposed management agreement will be the term length and monthly fee.

**6. A. Type of Ownership of Control (Check One)**

- |                         |       |                    |                |
|-------------------------|-------|--------------------|----------------|
| A. Ownership            | _____ | D. Option to Lease | _____ <u>X</u> |
| B. Option to Purchase   | _____ | E. Other (Specify) | _____          |
| C. Lease of _____ Years | _____ |                    |                |

**Check appropriate line above:** For applicants or applicant's parent company/owner that currently own the building/land for the project location, attach a copy of the title/deed. For applicants or applicant's parent company/owner that currently lease the building/land for the project location, attach a copy of the fully executed lease agreement. For projects where the location of the project has not been secured, attach a fully executed document including Option to Purchase Agreement, Option to Lease Agreement, or other appropriate documentation. Option to Purchase Agreements **must include** anticipated purchase price. Lease/Option to Lease Agreements **must include** the actual/anticipated term of the agreement **and** actual/anticipated lease expense. The legal interests described herein **must be valid** on the date of the Agency's consideration of the certificate of need application.

**Response:** The Applicant has an option to lease the building and the land upon which the building will be located from Facilities Development Group, LLC ("FDG"). FDG has no relationship with Open Arms, other than contractual relationships. Those include the Development Agreement between FDG, as developer, and WCO, which purchased the Green Valley Facilities from FDG and leased them to Open Arms. Please note that WCO and Open Arms have no relationship beyond a contractual relationship in which Open Arms Care Corporation operates all of its current facilities pursuant to leases from WCO of the associated buildings and land. WCO is not involved at all in the proposed project. The proposed project will create a contractual relationship between FDG and the Applicant for the facility which is the subject of this application, and seven similar facilities in Shelby County, Tennessee which the Applicant also plans to replace. After FDG has acquired and financed the land pursuant to the contract attached as Attachment A-6A and then arranged the construction and financing of the proposed facility via a construction loan from Servis 1<sup>st</sup> Bank, Open Arms will then have an option to lease the completed, fully furnished facility from FDG pursuant to the lease agreement referenced in the Option to Lease. Please see Attachment A-6A for copies of the deed of the current owner, the purchase agreement between the current owner and FDG, the Option to Lease, and an illustration of the transactions between the parties.

**6B. Attach a copy of the site's plot plan, floor plan, and if applicable, public transportation route to and from the site** on an 8 1/2" x 11" sheet of white paper, single or double-sided. **DO NOT SUBMIT BLUEPRINTS.** Simple line drawings should be submitted and need not be drawn to scale.

1) Plot Plan **must include:**

- a. Size of site (in acres);
- b. Location of structure on the site;
- c. Location of the proposed construction/renovation; and
- d. Names of streets, roads or highway that cross or border the site.

**Response:** Please see Attachment A-6B-1 for a plot plan. The proposed location is close to the road and observes all setback requirements. The site is approximately 4.1 acres and is presently zoned "CA" or Conservation Agriculture, which allows conventional single family homes and supportive living facilities. Please note that TCA §13-24-102 provides

that, for the purposes of all zoning laws in Tennessee, a “single-family residence” includes any home in which eight or fewer unrelated persons with disabilities reside. Therefore, the facility complies with the zoning of the proposed location.

The proposed location meets the distance requirement prohibiting more than two ICF/IID facilities from being within 500 yards of other ICF/IID facilities, as the nearest licensed ICF/IID is 13.3 miles away as illustrated in the table below.

#### Distance Between Proposed Location and Other Shelby County ICF/IID’s

Facility Name	ICF/IID Facility Address	Miles
Allendale Drive Home 1 - Memphis	4695 Allendale Drive, Memphis, TN 38128	12.1
Allendale Drive Home 2 - Memphis	4707 Allendale Drive, Memphis, TN 38128	12.1
Benjestown Home 1 - Memphis	5350 Benjestown Road, Memphis, TN 38127	24.3
Benjestown Home 2 - Memphis	5380 Benjestown Road, Memphis, TN 38127	24.3
Greendale Home 1 - Memphis	1445 Greendale Avenue, Memphis, TN 38127	18.9
Greendale Home 2 - Memphis	1457 Greendale Avenue, Memphis, TN 38127	18.9
Raleigh Millington Home 1 - Memphis	4240 Raleigh Millington Road, Memphis, TN 38128	13.3
Raleigh Millington Home 2 - Memphis	4254 Raleigh Millington Road, Memphis, TN 38128	13.3

- 2) Attach a floor plan drawing for the facility which includes legible labeling of patient care rooms (noting private or semi-private), ancillary areas, equipment areas, etc. On an 8 1/2 by 11 sheet of paper or as many as necessary to illustrate the floor plan.

**Response:** Please see Attachment A-6B-2 for a floor plan identifying the kitchen, living/sitting room (which will also serve as a dining space), pantry and emergency generator. There will be no outdoor storage, as there will be storage space in the garage.

Based on its understanding of the reimbursement rates of 4-bed and 8-bed homes and TennCare’s concern about containing ICF/IID cost, the Applicant decided that a dual structure 8-bed is more appropriate than 4-bed homes for the proposed replacement project. As noted above, 8-bed homes are more cost-effective than 4-bed homes. Additionally, as a TennCare provider with established costs, the Applicant wanted to maintain the current economics of the Medicaid system as much as possible. The Applicant’s proposal that the 8-bed facility consist of two 4-bed structures with identical floor plans is due to the aging and acuity of residents driving needs for private bedrooms.

- 3) Describe the relationship of the site to public transportation routes, if any, and to any highway or major road developments in the area. Describe the accessibility of the proposed site to patients/clients.

**Response:** The facility generally will not be open to the public. Access for individuals housed at the site will be supervised by the facility's staff. Families of these individuals will have access to the facility from U.S. Interstate 40 ("I-40"), which is approximately a 6 minute drive from the facility. From I-40, visitors take Exit 16 onto North Germantown Parkway, heading south for 1.4 miles. Visitors then turn left onto Dexter Road and right onto Dexter Lane after .7 miles. Finally, visitors will take the first right onto Old Dexter Road to reach the proposed location of the facility.

**Attachment Section A-6A, 6B-1 a-d, 6B-2, 6B-3.**



**7. Type of Institution** (Check as appropriate--more than one response may apply)

- |   |  |
|---|--|
| A. Hospital (Specify) _____   | H. Nursing Home _____  |
| B. Ambulatory Surgical Treatment Center (ASTC), Multi-Specialty _____                 | I. Outpatient Diagnostic Center _____  |
| C. ASTC, Single Specialty _____   | J. Rehabilitation Facility _____   |
| D. Home Health Agency _____   | K. Residential Hospice _____   |
| E. Hospice _____  | L. Nonresidential Substitution-Based Treatment Center for Opiate Addiction _____ |
| F. Mental Health Hospital _____   | M. Other (Specify) _____   |
| G. Intellectual Disability Institutional Habilitation Facility ICF/IID <u>X</u> _____ |  |
- Check appropriate lines(s).**

**8. Purpose of Review** (Check appropriate lines(s) - more than one response may apply)

- |   |  |
|---|--|
| A. New Institution _____  | F. Change in Bed Complement _____  |
| B. Modifying an ASTC with limitation still required per CON _____                         | <i>[Please note the type of change by underlining the appropriate response: Increase, Decrease, Designation, Distribution, Conversion, Relocation]</i> |
| C. Addition of MRI Unit _____   | Opiate Addiction _____   |
| D. Pediatric MRI _____  | G. Satellite Emergency Dept. _____   |
| E. Initiation of Health Care Service as defined in T.C.A. § 68-11-1607(4) (Specify) _____ | H. Change of Location <u>X</u> _____   |
|   | I. Other (Specify) _____   |

**9. Medicaid/TennCare, Medicare Participation**

MCO Contracts [check all that apply]

\_\_\_ AmeriGroup \_\_\_ United Healthcare Community Plan \_\_\_ BlueCare \_\_\_ TennCare Select

Medicare Provider Number N/A

Medicare Provider Number 744-7037

Certification Type ICF/MR

**If a new facility, will certification be sought for Medicare and/or Medicaid/Tenn/Care?**

**Medicare** \_\_\_ Yes \_\_\_ No X N/A      **Medicaid/TennCare** \_\_\_ Yes \_\_\_ No X N/A

**Response:** There are no provider agreements in ICF/IID programs between providers and TennCare MCO's, as the ICF/IID program is a "carve-out" from the managed care program. ICF/IID providers therefore receive no reimbursement from TennCare MCO's; instead, providers contract directly with TennCare, which reimburses them directly. Individual residents, however, do receive medical coverage for other services through TennCare MCO's due to contractual relationships between each resident and their respective TennCare MCO. Examples of such services include hospital emergency room visits, diagnostic imaging services, and other services not provided by the Applicant. Amerigroup, TennCare Select, BlueCare and UnitedHealthcare Community Plan are the only TennCare MCO's in Shelby County.

**10. Bed Complement Data**

**A. Please indicate current and proposed distribution and certification of facility beds.**

	<b>Current Licensed</b>	<b>Beds Staffed</b>	<b>Beds Proposed</b>	<b>*Beds Approved</b>	<b>**Beds Exempted</b>	<b>TOTAL Beds at Completion</b>
1) Medical						
2) Surgical						
3) ICU/CCU						
4) Obstetrical						
5) NICU						
6) Pediatric						
7) Adult Psychiatric						
8) Geriatric Psychiatric						
9) Child/Adolescent Psychiatric						
10) Rehabilitation						
11) Adult Chemical Dependency						
12) Child/Adolescent Chemical Dependency						
13) Long-Term Care Hospital						
14) Swing Beds						
15) Nursing Home - SNF (Medicare only)						
16) Nursing Home - NF (Medicaid only)						
17) Nursing Home - SNF/NF (dually certified Medicare/Medicaid)						
18) Nursing Home - Licensed (non-certified)						
19) ICF/IID	8					8
20) Residential Hospice						
<b>TOTAL</b>	<b>8</b>					<b>8</b>

\*Beds approved but not yet in service

\*\*Beds exempted under 10% per 3 year provision

**B. Describe the reasons for change in bed allocations and describe the impact the bed change will have on the applicant facility's existing services. **Attachment Section A-10.****

N/A

**C. Please identify all the applicant's outstanding Certificate of Need projects that have a licensed bed change component. If applicable, complete chart below.**

<b>CON Number(s)</b>	<b>CON Expiration Date</b>	<b>Total Licensed Beds Approved</b>
CN1511-050	4/1/2018	4
CN1511-051	4/1/2018	4
CN1511-052	4/1/2018	4
CN1511-053	4/1/2018	4
CN1511-054	4/1/2018	4
CN1512-062	5/1/2018	4
CN1512-063	5/1/2018	4
CN1512-064	5/1/2018	4
CN1512-065	5/1/2018	4

**11. Home Health Care Organizations** - Home Health Agency, Hospice Agency (excluding Residential Hospice), identify the following by checking all that apply: N/A

	Existing Licensed County	Parent Office County	Proposed Licensed County		Existing Licensed County	Parent Office County	Proposed Licensed County
Anderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lauderdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bedford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lawrence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Benton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lewis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lincoln	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blount	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Loudon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McMinn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McNairy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cannon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Macon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carroll	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Madison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cheatham	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marshall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mauzy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Claiborne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Meigs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Monroe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cocke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coffee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Moore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crockett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Morgan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cumberland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Obion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Davidson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Overton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decatur	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Perry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeKalb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pickett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dickson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Polk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Putnam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fayette	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rhea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fentress	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Franklin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Robertson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gibson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rutherford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Giles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grainger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sequatchie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Greene	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sevier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grundy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shelby	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamblen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smith	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stewart	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hancock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardeman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sumner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tipton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hawkins	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trousdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Haywood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Unicoi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Van Buren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hickman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Warren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Washington	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Humphreys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wayne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jackson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Weakley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jefferson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Johnson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Williamson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Knox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

**12. Square Footage and Cost Per Square Footage Chart** Not Applicable.

Unit/Department	Existing Location	Existing SF	Temporary Location	Proposed Final Location	Proposed Final Square Footage		
					Renovated	New	Total
Unit/Department GSF Sub-Total							
Other GSF Total							
Total GSF							
*Total Cost							
**Cost Per Square Foot					<input type="checkbox"/> Below 1 <sup>st</sup> Quartile <input type="checkbox"/> Between 1 <sup>st</sup> and 2 <sup>nd</sup> Quartile <input type="checkbox"/> Between 2 <sup>nd</sup> and 3 <sup>rd</sup> Quartile <input type="checkbox"/> Above 3 <sup>rd</sup> Quartile	<input type="checkbox"/> Below 1 <sup>st</sup> Quartile <input type="checkbox"/> Between 1 <sup>st</sup> and 2 <sup>nd</sup> Quartile <input type="checkbox"/> Between 2 <sup>nd</sup> and 3 <sup>rd</sup> Quartile <input type="checkbox"/> Above 3 <sup>rd</sup> Quartile	<input type="checkbox"/> Below 1 <sup>st</sup> Quartile <input type="checkbox"/> Between 1 <sup>st</sup> and 2 <sup>nd</sup> Quartile <input type="checkbox"/> Between 2 <sup>nd</sup> and 3 <sup>rd</sup> Quartile <input type="checkbox"/> Above 3 <sup>rd</sup> Quartile
Cost per Square Foot Is Within Which Range (For quartile ranges, please refer to the Applicant's Toolbox on <a href="http://www.tn.gov/hsda">www.tn.gov/hsda</a> )							

\* The Total Construction Cost should equal the Construction Cost reported on line A5 of the Project Cost Chart.

\*\* Cost per Square Foot is the construction cost divided by the square feet. Please do not include contingency costs.

### 13. MRI, PET, and/or Linear Accelerator

- Describe the acquisition of any Magnetic Resonance Imaging (MRI) scanner that is adding a MRI scanner in counties with population less than 250,000 or initiation of pediatric MRI in counties with population greater than 250,000 and/or

**Response:** Not Applicable.

- Describe the acquisition of any Positron Emission Tomographer (PET) or Linear Accelerator if initiating the service by responding to the following:

**Response:** Not Applicable.

- Complete the chart below for acquired equipment.

**Response:** Not Applicable.

<input type="checkbox"/> Linear Accelerator	Mev _____	Types	<input type="checkbox"/> SRS <input type="checkbox"/> IMRT <input type="checkbox"/> IGRT <input type="checkbox"/> Other _____
	Total Cost*: _____		<input type="checkbox"/> By Purchase
<input type="checkbox"/> New	<input type="checkbox"/> Refurbished		<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
			<input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> MRI	Tesla: _____ Magnet: _____		<input type="checkbox"/> Breast <input type="checkbox"/> Extremity
	Total Cost*: _____		<input type="checkbox"/> Open <input type="checkbox"/> Short Bone <input type="checkbox"/> Other _____
<input type="checkbox"/> New	<input type="checkbox"/> Refurbished		<input type="checkbox"/> By Purchase
			<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
			<input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> PET	<input type="checkbox"/> PET only <input type="checkbox"/> PET/CT <input type="checkbox"/> PET/MRI		<input type="checkbox"/> By Purchase
	Total Cost*: _____		<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
<input type="checkbox"/> New	<input type="checkbox"/> Refurbished		<input type="checkbox"/> If not new, how old? (yrs) _____

\* As defined by Agency Rule 0720-9-.01(13)

- In the case of equipment purchase, include a quote and/or proposal from an equipment vendor. In the case of equipment lease, provide a draft lease or contract that at least includes the term of the lease and the anticipated lease payments along with the fair market value of the equipment.

**Response:** Not Applicable.

- Compare lease cost of the equipment to its fair market value. Note: Per Agency Rule, the higher cost must be identified in the project cost chart.

**Response:** Not Applicable.

- Schedule of Operations: **Response:** Not Applicable.

Location	Days of Operation (Sunday through Saturday)	Hours of Operation (example: 8 am - 3 pm)
Fixed Site (Applicant)	_____	_____
Mobile Locations		

(Applicant)		
(Name of Other Location		
(Name of Other Location		

E. Identify the clinical applications to be provided that apply to the project.

**Response:** Not Applicable.

F. If the equipment has been approved by the FDA within the last five years provide documentation of the same.

**Response:** Not Applicable.

## **SECTION B: GENERAL CRITERIA FOR CERTIFICATE OF NEED**

In accordance with T.C.A. § 68-11-1609(b), "no Certificate of Need shall be granted unless the action proposed in the application for such Certificate is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of health care." Further standards for guidance are provided in the State Health Plan developed pursuant to T.C.A. § 68-11-1625.

The following questions are listed according to the four criteria: (1) Need, (2) Economic Feasibility, (3) Applicable Quality Standards, and (4) Contribution to the Orderly Development of Health Care. Please respond to each question and provide underlying assumptions, data sources, and methodologies when appropriate. Please type each question and its response on an 8 1/2" x 11" white paper, single-sided or double sided. All exhibits and tables must be attached to the end of the application in correct sequence identifying the question(s) to which they refer, unless specified otherwise. ***If a question does not apply to your project, indicate "Not Applicable (NA)."***

### **QUESTIONS**

#### **SECTION B: NEED**

- A. Provide a response to each criterion and standard in Certificate of Need Categories in the State Health Plan that are applicable to the proposed project. Criteria and standards can be obtained from the Tennessee Health Services and Development Agency or found on the Agency's website at <http://www.tn.gov/hsda/article/hsda-criteria-and-standards>.

#### **SERVICE SPECIFIC CRITERIA AND STANDARD REVIEW**

##### CONSTRUCTION, RENOVATION, EXPANSION, AND REPLACEMENT OF HEALTH CARE INSTITUTIONS

**For relocation or replacement of an existing licensed health care institution:**

- a. **The applicant should provide plans which include costs for both renovation and relocation, demonstrating the strengths and weaknesses of each alternative.**

**Response:** Renovation rather than relocation was not deemed a reasonable alternative to the Applicant due to the extensive costs to meet new fire-safety regulations and those which would have been necessary to update the building taken in the context of noted unsafe changes in the neighborhood.

- b. **The applicant should demonstrate that there is an acceptable existing or projected future demand for the proposed project.**

**Response:** There is an acceptable existing and future demand for the proposed project that is demonstrated by the current and historical near full census at the facility. This demand has been relatively stable, so the Applicant does not anticipate future decrease in the demand.

#### **A. Need**

1. *The population-based estimate of the total need for ICF/MR facilities is .032 percent of the general population. This estimate is based on the estimate for all mental retardation of 1 percent. Of the 1 percent estimate, 3.2 percent of those are estimated to meet level 1 criteria and be appropriate for ICF/MR services.*

**Response:** The 2017 population of Shelby County, Tennessee is estimated to be 964,804, with 64 ICF/IID beds currently in the county. Using the need-based estimate of .032%, the need in Shelby County is 309 beds.

This project, however, does not involve the development of new ICF/IID beds. Therefore, the population-based needs analysis in the Guidelines for Growth is inapplicable. The beds which are being used by this project serve only to replace beds already in existence at the Applicant's current facility. Thus, no net increase in the number of ICF/IID beds is intended by this application.

2. *The estimate for total need should be adjusted by the existent ICF/MR beds operating in the area as counted by the Department of Health, Department of Mental Health and Developmental Disabilities, and the Division of Mental Retardation Services in the Joint Annual Reports.*

**Response:** The total estimated need minus the existing beds leaves a need of 245 beds.

#### *B. Service Area*

1. *The geographic service area should be reasonable and based on an optimal balance between population density and service proximity.*

**Response:** The Residents in the Applicant's facility who will be relocated are currently in Shelby County, so it is less disruptive to the Residents as well as their families and conservators if they remain in the Shelby County area.

Given the anticipated acuity level of individuals at the facility, and the recent changes by CMS regarding Home and Community-Based Services (HCBS) as to whether such individuals receive services in their own home or in the community, transportation to a day center may not occur on a regular basis. If such day center services are needed Open Arms has an existing day treatment center in Memphis which serves Open Arms' Shelby County facilities and which will continue to do so upon completion of the proposed facility if this application is approved.

Please find below a chart of distances from the proposed location to services within the area.

Shelby County (Old Dexter Road, Cordova, TN 38016)			
Service	Closest Location	Driving Distance	Driving Time
Nearest Incorporated City	Cordova, TN	Facility is within city limits.	Not applicable.



<b>Hospital</b>	Saint Francis Hospital – Bartlett, 2896 Kate Bond Road, Bartlett, TN 38133	3.6 miles	9 minutes
<b>Physician Offices</b>	Locations vary but they are all close to Saint Francis-Bartlett hospital.	Varies	Varies
<b>EMS/Fire Station</b>	Memphis Fire Station No. 58, 8395 Dexter Road, Cordova	.2 Miles	1 minute
<b>Day Treatment (if applicable)</b>	5120 Yale Road, Memphis, TN 38134	9.6 Miles	21 minutes

*2. The relationship of the socio-demographics of the service area and the project population to receive services should be considered. The proposal's sensitivity and responsiveness to the special needs of the service area should be considered including accessibility to consumers, particularly women, racial and ethnic minorities, low-income groups, and those needed services involuntarily.*

**Response:** The project population consists of residents of one of the Applicant's facilities that the Applicant desires to relocate to an ICF/IID within Shelby County. The Applicant is aware of their special needs, including their age distribution, nutritional needs, mobility and visual impairments, and their psychiatric and behavioral needs. This facility is designed and located with their needs in mind and is dedicated to serving them. The Applicant serves all individuals regardless of racial, ethnic, or other demographic background. The proposed facility will be located in a residential setting to promote community inclusion.

#### *C. Relationship to Existing Applicable Plans*

*1. The proposal's relationship to policy as formulated in the state, city, county, and /or regional plans and other documents should be a significant consideration.*

**Response:** The Applicant is building this facility to continue to most effectively and efficiently serve the needs of the Residents.

*2. The proposal's relationship to underserved geographic areas and underserved populations groups as identified in state, city, county, and/or regional plans and other documents should be a significant consideration.*

**Response:** The Applicant is building this facility to continue to most effectively and efficiently serve the needs of the Residents, including underserved groups.

*3. The impact of the proposal on similar services supported by state and federal appropriations should be assessed and considered.*

**Response:** This project will shift existing ICF/IID beds from the Applicant's old facility to an eight-bed group home, as a part of the Applicant's plan to modernize its aging facilities.

*4. The degree of projected financial participation in the Medicare and TennCare programs should be considered.*

**Response:** ICF/IID services in Tennessee are funded by TennCare and the Applicant anticipates that TennCare funds will be responsible for 96% of the facility's revenue. The remaining 4% will come from residents' SSI benefits.

*D. Relationship to Existing Similar Services in the Area*

1. *The area's trends in occupancy and utilization of similar services should be considered.*

**Response:** The Applicant operates all 64 ICF/IID beds currently licensed in Shelby County in eight (8) facilities which each contain 8 licensed beds.

These beds are at full occupancy. A chart of the occupancy of ICF/IID's in the county for the past three years follows.

**ICF/IID Utilization, Shelby County**

	2012	2012	2012	2013	2013	2013	2014	2014	2014
Facility/Address	Lic. Beds	ADC	% Occup.	Lic. Beds	ADC	% Occup.	Lic. Beds	ADC	% Occup.
Allendale Drive Home 1	8	8	99.5%	8	8	99.5%	8	8	99.5%
Allendale Drive Home 2	8	8	99.5%	8	8	99.5%	8	8	99.5%
Benjestown Home 1	8	8	99.5%	8	8	99.5%	8	8	99.5%
Benjestown Home 2	8	8	99.5%	8	8	99.5%	8	8	99.5%
Greendale Home 1	8	8	99.5%	8	8	99.5%	8	8	99.5%
Greendale Home 2	8	8	99.5%	8	8	99.5%	8	8	99.5%
Raleigh Millington Home 1	8	8	99.5%	8	8	99.5%	8	8	99.5%
Raleigh Millington Home 2	8	8	99.5%	8	8	99.5%	8	8	100.0%
<b>TOTAL</b>	<b>64</b>	<b>64</b>	<b>99.5%</b>	<b>64</b>	<b>64</b>	<b>99.4%</b>	<b>64</b>	<b>64</b>	<b>99.5%</b>

Source: Open Arms internal records

2. *Accessibility to specific special needs groups should be an important factor.*

**Response:** As an ICF/IID home, this facility will be accessible to individuals living with intellectual or developmental disabilities. Its bathroom and bedroom facilities and nursing station are specifically designed to assist medically fragile residents with severe intellectual or developmental disabilities.

- B. Describe the relationship of this project to the applicant facility's long-range development plans, if any, and how it relates to related previously approved projects of the applicant.

**Response:** The Applicant is a long time provider of ICF/IID services in Tennessee, and this proposed replacement home is a part of the Applicant's intended systematic replacement of various aging buildings. This replacement home will provide modern amenities similar to the new homes, located in East Tennessee, that were approved by the Agency for the Applicant in 2016.

- C. Identify the proposed service area and justify the reasonableness of that proposed area. Submit a county level map for the Tennessee portion of the service area using the map on the following page, clearly marked to reflect the service area as it relates to meeting the requirements for CON criteria and standards that may apply to the project. Please include a discussion of the inclusion of counties in the border states, if applicable. **Attachment Section B - Need-C.**

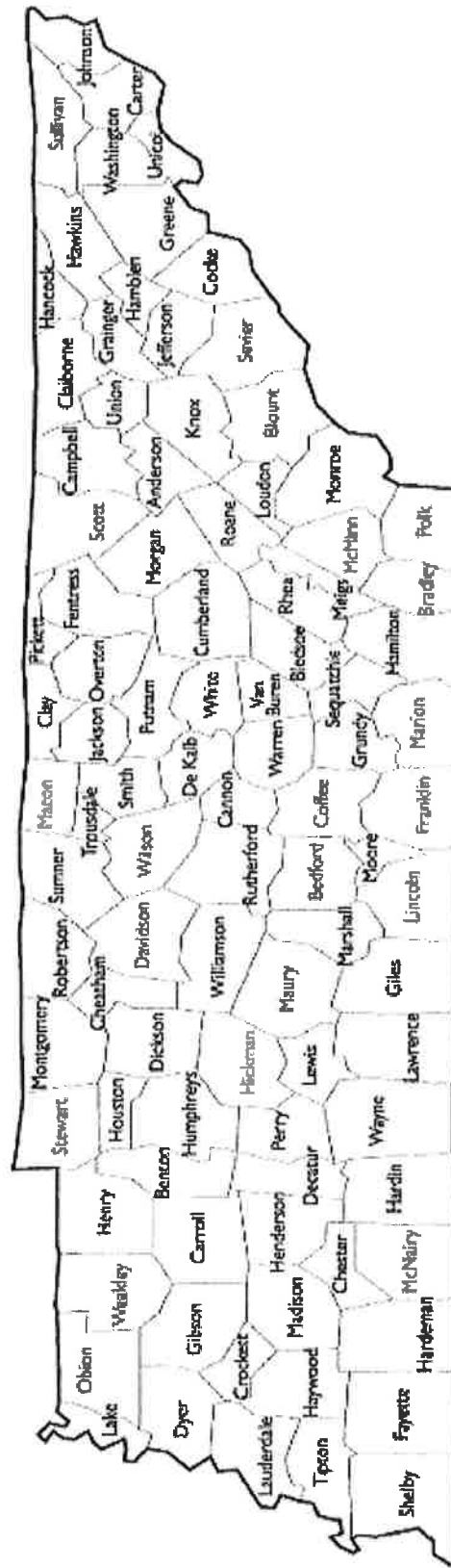
**Response:** Please see Attachment B – Need – C for a map of the service area. As the residents are currently in Shelby County and will be remaining there, there is no need to justify a change of service area.

Please complete the following tables, if applicable:

Service Area Counties	Historical Utilization-County Residents	% of total procedures
County #1	Not Applicable.	
County #2		
Etc.		
Total		100%

Service Area Counties	Projected Utilization-County Residents	% of total procedures
County #1	Not Applicable.	
County #2		
Etc.		
Total		100%

## County Level Map



- D. 1). a) Describe the demographics of the population to be served by the proposal.
- b) Using current and projected population data from the Department of Health, the most recent enrollee data from the Bureau of TennCare, and demographic information from the US Census Bureau, complete the following table and include data for each county in your proposed service area.

Projected Population Data: <http://www.tn.gov/health/article/statistics-population>

TennCare Enrollment Data: <http://www.tn.gov/tenncare/topic/enrollment-data>

Census Bureau Fact Finder: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

Demographic Variable/ Geographic Area	Department of Health/Health Statistics							Bureau of the Census				TennCare	
	2017 Total Population-	2021 Total Population	Total Population-% Change	*Target Population- Current Year	*Target Population- Project Year	*Target Population- % Change	Target Population Projected Year as% of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as %Of Total	TennCare Enrollees	TennCare Enrollees as % of Total Population
Shelby County	964,804	986,423	2.2%	308,77	315,77	2.3%	.00032%	35.4	\$46,224	188,790	20.2%	247,356	25.6%
Service Area Total	964,804	986,423	2.2%	308,77	315,77	2.3%	.00032%	35.4	\$46,224	188,790	20.2%	247,356	25.6%
State of TN Total	6,887,572	7,179,512	4.2%	2,204.0	2,297.4	4.2%	.00032%	38.7	\$45,219	1,050,889	15.8%	1,422,877	20.7%

\* Target Population is population that project will primarily serve. For example, nursing home, home health agency, hospice agency projects typically primarily serve the Age 65+ population; projects for child and adolescent psychiatric services will serve the Population Ages 0-19. Projected Year is defined in select service-specific criteria and standards. If Projected Year is not defined, default should be four years from current year, e.g., if Current Year is 2016, then default Projected Year is 2020.

**Response:** The target population is .032% of the general population.

- 2) Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly the elderly, women, racial and ethnic minorities, and low-income groups. Document how the business plans of the facility will take into consideration the special needs of the service area population.

**Response:** The Residents of the facility are all individuals with severe intellectual or developmental disabilities requiring institutional care. The Applicant's facility will be specially designed to meet residents' physical and medical needs, such as accessible entry doors, hallways, bathrooms, transportation, and ADA-compliant sink/vanity and toilets. Other services that will be provided include assistance meeting hygiene requirements, specialized dietary services, physical therapy, and activities of daily living, including physical, occupational, and behavioral therapies. The overall goal is to provide residents with an environment and services that will let them live dignified and meaningful lives in a community setting.

- E. Describe the existing and approved but unimplemented services of similar healthcare providers in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. List each provider and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: Admissions or discharges, patient days, average length of stay, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc. This doesn't apply to projects that are solely relocating a service.

**Response:** Not applicable. As noted above, all existing ICF/IID beds in Shelby County are at full occupancy, and there are no approved-but-unimplemented ICF/IID beds for Shelby County.

- F. Provide applicable utilization and/or occupancy statistics for your institution for each of the past three years and the projected annual utilization for each of the two years following completion of the project. Additionally, provide the details regarding the methodology used to project utilization. The methodology **must include** detailed calculations or documentation from referral sources, and identification of all assumptions.

**Response:** The Applicant projects 100% occupancy of all eight beds, or 2,910 and 2,898 resident bed days, respectively, for the first two years of operation of this facility. This is based upon the fact that the facility is currently at 100% occupancy and the Applicant anticipates no change. .

## **SECTION B: ECONOMIC FEASIBILITY**

- A. Provide the cost of the project by completing the Project Costs Chart on the following page. Justify the cost of the project.
- 1) All projects should have a project cost of at least \$15,000 (the minimum CON Filing Fee). (See Application Instructions for Filing Fee)
  - 2) The cost of any lease (building, land, and/or equipment) should be based on fair market value or the total amount of the lease payments over the initial term of the lease, whichever is greater. Note: This applies to all equipment leases including by procedure or "per click" arrangements. The methodology used to determine the total lease cost for a "per click" arrangement must include, at a minimum, the projected procedures, the "per click" rate and the term of the lease.
  - 3) The cost for fixed and moveable equipment includes, but is not necessarily limited to, maintenance agreements covering the expected useful life of the equipment; federal, state, and local taxes and other government assessments; and installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding, which should be included under construction costs or incorporated in a facility lease.
  - 4) Complete the Square Footage Chart on page 8 and provide the documentation. Please note the Total Construction Cost reported on line 5 of the Project Cost Chart should equal the Total Construction Cost reported on the Square Footage Chart.
  - 5) For projects that include new construction, modification, and/or renovation — **documentation must be** provided from a licensed architect or construction professional that support the estimated construction costs. Provide a letter that includes the following:
    - a) A general description of the project;
    - b) An estimate of the cost to construct the project;
    - c) A description of the status of the site's suitability for the proposed project; and

- d) Attesting the physical environment will conform to applicable federal standards, manufacturer's specifications and licensing agencies' requirements including the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities in current use by the licensing authority.

**Response:** Please see Attachment B. Economic Feasibility – A5 for a copy of the letter from the architect supporting the estimated construction cost. Please see the Project Costs Chart on the following page, which includes the cost of an emergency generator.

As the total rent expense over the term of the lease is higher than the costs of land purchase, development, construction, etc. that amount is not used in the Project Costs Chart, but the Applicant has used the total lease costs, plus certain "soft costs" and a small Contingency Fund in the Project Costs Chart for unanticipated expenses.

## PROJECT COST CHART

A.	Construction and equipment acquired by purchase:	
	1. Architectural and Engineering Fees	_____
	2. Legal, Administrative (Excluding CON Filing Fee), Consultant Fees	<u>\$15,000</u>
	3. Acquisition of Site	_____
	4. Preparation of Site	_____
	5. Total Construction Costs	_____
	6. Contingency Fund	<u>\$35,671</u>
	7. Fixed Equipment (Not included in Construction Contract)	_____
	8. Moveable Equipment (List all equipment over \$50,000 as separate attachments)	_____
	9. Other (Specify) _____	_____
B.	Acquisition by gift, donation, or lease:	
	1. Facility (inclusive of building and land)	<u>\$5,050,000</u>
	2. Building only	_____
	3. Land only	_____
	4. Equipment (Specify) _____	_____
	5. Other (Specify) _____	_____
C.	Financing Costs and Fees:	
	1. Interim Financing	_____
	2. Underwriting Costs	_____
	3. Reserve for One Year's Debt Service	_____
	4. Other (Specify) _____	_____
D.	Estimated Project Cost (A+B+C)	<u>\$5,100,671</u>
E.	CON Filing Fee	<u>\$29,329</u>
F.	Total Estimated Project Cost (D+E) <span style="float: right;"><b>TOTAL</b></span>	<u>\$5,130,000</u>



Please note the facility cost of \$5,050,000 was calculated as required by HDSA rules as to the use of the higher of actual cost or rental costs over the life of a lease, with \$5,050,000 being the estimated average annual rental cost of \$168,333 multiplied by the number years in the lease term (30).

For comparison, the components of development and construction costs are as follows:

Acquisition of site	225,000
Architectural and engineering fees	35,000
Preparation of site	45,000
Construction costs	1,150,000
Landscaping and irrigation	25,000
Contingency fund	50,000
Furnishings and equipment	50,000
TOTAL	\$1,580,000

B. Identify the funding sources for this project.

Check the applicable item(s) below and briefly summarize how the project will be financed. ***(Documentation for the type of funding MUST be inserted at the end of the application, in the correct alpha/numeric order and identified as Attachment Section B-Economic Feasibility-B.)***

- ☐ 1) Commercial loan - Letter from lending institution or guarantor stating favorable initial contact, proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions;
- ☐ 2) Tax-exempt bonds - Copy of preliminary resolution or a letter from the issuing authority stating favorable initial contact and a conditional agreement from an underwriter or investment banker to proceed with the issuance;
- ☐ 3) General obligation bonds - Copy of resolution from issuing authority or minutes from the appropriate meeting;
- ☐ 4) Grants - Notification of intent form for grant application or notice of grant award;
- ☐ 5) Cash Reserves - Appropriate documentation from Chief Financial Officer of the organization providing the funding for the project and audited financial statements of the organization; and/or
- ☒ 6) Other - Identify and document funding from all other sources.

**Response:** The cost of the project will be paid through a commercial loan from ServisFirst Bank to FDG, which FDG will pay back using the Applicant's lease payments. Please see Attachment B – Economic Feasibility – B for documentation to this effect.

C. Complete Historical Data Charts on the following two pages — **Do not modify the Charts provided or submit Chart substitutions!**

Historical Data Chart represents revenue and expense information for the last *three* (3) years for which complete data is available. Provide a Chart for the total facility and Chart just for the services being presented in the proposed project, if applicable. **Only complete one chart if it suffices.**

*Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.*

**Response:** Please see Attachment B. Economic Feasibility – C. The Applicant's payment for the ICF/IID services it provides will be reimbursement from TennCare be based on its expenses such that its funding will tend to be equal to its expenses. Therefore, there will be no surplus revenue. Further, the Applicant anticipates no bad debt due to its reimbursement by TennCare for 96% of its expenses, with the remaining 4% anticipated to come from residents' SSI income. Please note that the Applicant's lease payments are structured to allow the Landlord to fulfill its responsibility to maintain the building, so the Applicant will not be responsible for repairs and upkeep of the facility beyond the usual tenant duties such as lawn care and cleaning. Additionally, the Projected Data Chart accounts for residents' dietary meals and "Supplies" expenses in the "Other Expenses" line item at D.9 in the chart itself and in the "Programming Expenses" category if one refers to the itemization of that line item that follows the Projected Data Chart.

With respect to the losses shown in the Historical Data Chart for 2014, 2015 and 2016 and the projected net income in the Projected Data Chart, the Applicant notes that prior to 2015 it was the obligor on its mortgage financing regarding the current facility (as well as numerous of its other facilities). In 2015 Open Arms entered into a sale-leaseback transaction regarding those facilities, which changed how Open Arms paid the occupancy costs for its facilities (as lease payments rather than mortgage payments). However, due to the requirements of the cost-based reimbursement methodology for ICF/IID facilities (including requirements as to the calculation of the depreciation allowance for the landlord's costs in a sale-leaseback transaction), there is a "lag" which results in the changes from mortgage payments to lease payments not appearing until 2016.

D. Complete Projected Data Charts on the following two pages - **Do not modify the Charts provided or submit Chart substitutions!**

The Projected Data Chart requests information for the two years following the completion of the proposed services that apply to the project. Please complete two Projected Data Charts. One Projected Data Chart should reflect revenue and expense projections for the **Proposal Only** (i.e., if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility). The second Chart should reflect information for the total facility. **Only complete one chart if it suffices.**

*Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.*

**Response:** Please see Attachment B. Economic Feasibility – C. Please note that the estimated average annual rental cost will be tied to the anticipated principal and interest payments due from FDG to its lender, and the initial principal amount will be related to the costs of construction and development. The currently estimated annual rental cost averages \$110,000, but, due to the above, annual rental cost will be higher in early years and decrease in later years as the outstanding principal balance of the loan decreases.

- E. 1) Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table.

	Previous Year	Current Year	Year One	Year Two	% Change (Current Year to Year 2)
<b>Gross Charge</b> ( <i>Gross Operating Revenue/Utilization Data</i> )	\$511.23	\$529.45	\$614.66	\$612.41	15.7%
<b>Deduction from Revenue</b> ( <i>Total Deductions/Utilization Data</i> )	0	0	0	0	0
<b>Average Net Charge</b> ( <i>Net Operating Revenue/Utilization Data</i> )	\$511.23	\$529.45	\$614.66	\$612.41	15.7%

- 2) Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

**Response:** The proposed charge schedule is \$614.66 per patient day for the first year of operations of the new facility. The Applicant anticipates that almost all of its revenue will come from TennCare, with some of the revenue coming from residents' SSI benefits, as required by TennCare. The money from residents' SSI benefits will be used to cover some of the cost of services. The Applicant is not aware of any residents with food stamp benefits.

- 3) Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

**Response:** As the only provider in Shelby County, the Applicant can confirm that the proposed charges are in line with rates it charges at its other facilities in the Service Area. Open Arms' proposed rate is \$614.66 per patient day, which is slightly more than the \$521.85 average rate charged by Open Arms in Shelby County. The rates charged by Open Arms in its Shelby County facilities are shown in the table below. The slight difference in rates can be explained by the additional fire safety code requirements the proposed home will need to meet as well as an anticipated increase in expenses associated with patient care. Most of the residents have been in the home for many years and are increasing in acuity level as they age. Consequently, Open Arms has to plan the proposed home keeping both current and future needs of the residents in mind, which will impact the cost of operations.

Please note that the per diem charges primarily include daily nursing services with licensed nurses or techs and primary physician services. Specialized care, hospitalizations or ancillary medical care are covered by TennCare.

<b>Shelby County 8-Bed ICF Established Per Diem Rate</b>	
<b>Facility</b>	<b>Rate</b>
Open Arms 4240 Raleigh Millington Road	\$517.78
Open Arms 4254 Raleigh Millington Road	\$526.39
Open Arms 1445 Greendale Avenue (Shelby #2)	\$512.70

Open Arms 1457 Greendale Avenue (Shelby #1)	\$527.05
Open Arms 5350 Benjestown Road	\$529.45
Open Arms 5380 Benjestown Road	\$520.60
Open Arms 4695 Allendale Drive	\$523.19
Open Arms 4707 Allendale Drive	\$517.69

- F. 1) Discuss how projected utilization rates will be sufficient to support the financial performance. Indicate when the project's financial breakeven is expected and demonstrate the availability of sufficient cash flow until financial viability is achieved. Provide copies of the balance sheet and income statement from the most recent reporting period of the institution and the most recent audited financial statements with accompanying notes, if applicable. For all projects, provide financial information for the corporation, partnership, or principal parties that will be a source of funding for the project. Copies must be inserted at the end of the application, in the correct alpha-numeric order and labeled as **Attachment Section B-Economic Feasibility-FI. NOTE: Publicly held entities only need to reference their SEC filings.**

**Response:** Please also see Attachment B – Economic Feasibility – F1.

- 2) Net Operating Margin Ratio - Demonstrates how much revenue is left over after all the variable or operating costs have been paid. The formula for this ratio is: (Earnings before interest, Taxes, and Depreciation/Net Operating Revenue).

Utilizing information from the Historical and Projected Data Charts please report the net operating margin ratio trends in the following table:

Year	2nd Year previous to Current Year	1st Year previous to Current Year	Current Year	Projected Year 1	Projected Year 2
Net Operating Margin Ratio	.064	-.065	-.040	0	0

- 3) Capitalization Ratio (Long-term debt to capitalization) - Measures the proportion of debt financing in a business's permanent (Long-term) financing mix. This ratio best measures a business's true capital structure because it is not affected by short-term financing decisions. The formula for this ratio is: (Long-term debt/(Long-term debt+Total Equity (Net assets)) x 100).

For the entity (applicant and/or parent company) that is funding the proposed project please provide the capitalization ratio using the most recent year available from the funding entity's audited balance sheet, if applicable. The Capitalization Ratios are not expected from outside the company lenders that provide funding.

**Response:** Using 2016 data, the capitalization ratio for the Applicant is 146.88% after calculating per the formula  $((2,000,000/(2,000,000 + (-638,307))) \times 100 = 146.88\%)$ .

- G. Discuss the project's participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid and medically indigent patients will be served by the project. Additionally, report the estimated gross operating revenue dollar amount and percentage of

projected gross operating revenue anticipated by payor classification for the first year of the project by completing the table below.

**Response:** All Residents are TennCare/Medicaid recipients. This project is intended to provide specialized services to TennCare/Medicaid recipients in need of ICF level care. The Applicant anticipates that 96% of its revenue will come from TennCare and the remaining 4% from resident's SSI income.

- H. Provide the projected staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions. Additionally, please identify projected salary amounts by position classifications and compare the clinical staff salaries to prevailing wage patterns in the proposed service area as published by the Department of Labor & Workforce Development and/or other documented sources.

**Response:** ICF/IID services contemplate more than nursing level care; there is requirement for "active treatment," meaning individualize programming. Each client is required to have a specific and dynamic individualized habilitation plan of services. Regulations require the involvement of a multidisciplinary team to evaluate, design and implement client plans, including a Qualified MR Professional, Dietician and Behavioral Analyst. These professionals staff the individual habilitation plan teams, design programs and environments, monitor progress and revise as necessary to recognize changing client needs on an individualized basis.

Position Classification	Existing FTEs (2017)	Projected FTEs Year 1	Average Wage (Contractual Rate)	Area Wide/Statewide Average Wage
<b>a) Direct Patient Care Positions</b>				
RN	0.25	0.25	\$60,000	\$57,590
LPN	1.98	1.98	\$38,836	\$37,180
Qualified MR Professional	0.13	0.13	\$65,000	N/A
Direct Support Staff	12.50	20.05	\$22,431	\$23,340
<b>Total Direct Patient Care Positions</b>	14.86	22.41		
<b>b) Non-Patient Care Positions</b>				
Resident Manager	1.00	1.00	\$34,000	N/A
Maintenance	0.25	0.25	\$34,000	N/A
Central Office	0.75	0.75	Varies	Varies
<b>Total Non-Patient Care Positions</b>	2	2		
<b>Total Employees (A+B)</b>	16.86	26.41		
<b>c) Contractual Staff</b>				
Speech Therapist	0.13	0.13	\$80/hour	\$70,810
Occupational Therapist	0.13	0.13	\$65/hour	\$82,830
Physical Therapist	0.13	0.13	\$75/hour	\$85,420
<b>Total Staff (a+b+c)</b>	17.25	26.8		

Source: Tennessee Department of Labor & Workforce Development (2016 LMI)

- I. Describe all alternatives to this project which were considered and discuss the advantages and disadvantages of each alternative including but not limited to:

HF-0004 Revised 12/2016 - All forms prior to this time are obsolete.

RDA 1651

- 1) Discuss the availability of less costly, more effective and/or more efficient alternative methods of providing the benefits intended by the proposal. If development of such alternatives is not practicable, justify why not, including reasons as to why they were rejected.

**Response:** Renovating the current facility was an option that was contemplated but rejected due to the expense that would have been expended on an aging home as well as the considerable disruption renovation would have caused to residents. Given the extensive impending fire-safety regulation changes that would require the Applicant to make significant renovations to the home in addition to any modernization renovations in lieu of relocation, the cost of building a new facility was more cost-effective.

- 2) Document that consideration has been given to alternatives to new construction, e.g., modernization or sharing arrangements.

**Response:** As previously noted, the expenses associated with renovating the facility were unreasonable given the extent of renovations that would be required.

## **SECTION B: CONTRIBUTION TO THE ORDERLY DEVELOPMENT OF HEALTH CARE**

- A. List all existing health care providers (i.e., hospitals, nursing homes, home care organizations, etc.), managed care organizations, alliances, and/or networks with which the applicant currently has or plans to have contractual and/or working relationships, that may directly or indirectly apply to the project, such as, transfer agreements, contractual agreements for health services.

**Response:** None.

- B. Describe the effects of competition and/or duplication of the proposal on the health care system, including the impact to consumers and existing providers in the service area. Discuss any instances of competition and/or duplication arising from your proposal including a description of the effect the proposal will have on the utilization rates of existing providers in the service area of the project.

- 1) **Positive Effects**

**Response:** None known other than as currently exist for the current facility.

- 2) **Negative Effects**

**Response:** None known.

- C. 1) Discuss the availability of and accessibility to human resources required by the proposal, including clinical leadership and adequate professional staff, as per the State of Tennessee licensing requirements and/or requirements of accrediting agencies, such as the Joint Commission and Commission on Accreditation of Rehabilitation Facilities.

**Response:** Sufficient as shown by the current facility operations. The Applicant currently meets and will continue to meet the staffing requirements of the facility following the proposed relocation. The Applicant does not anticipate needing to hire additional staff from what is in use at the current location of the facility.

- 2) Verify that the applicant has reviewed and understands all licensing and/or certification as required by the State of Tennessee and/or accrediting agencies such as the Joint Commission for medical/clinical staff. These include, without limitation, regulations concerning clinical leadership,

physician supervision, quality assurance policies and programs, utilization review policies and programs, record keeping, clinical staffing requirements, and staff education.

**Response:** The Applicant has reviewed and understands the aforementioned requirements.

- 3) Discuss the applicant's participation in the training of students in the areas of medicine, nursing, social work, etc. (e.g., internships, residencies, etc.).

**Response:** Not applicable.

- D. Identify the type of licensure and certification requirements applicable and verify the applicant has reviewed and understands them. Discuss any additional requirements, if applicable. Provide the name of the entity from which the applicant has received or will receive licensure, certification, and/or accreditation.

**Licensure:** The Tennessee Department of Intellectual and Developmental Disabilities.

**Certification Type (e.g. Medicare SNF, Medicare LTAC, etc.):** TennCare

**Accreditation (i.e., Joint Commission, CARF, etc.):** Not applicable.

- 1) If an existing institution, describe the current standing with any licensing, certifying, or accrediting agency. Provide a copy of the current license of the facility and accreditation designation.

**Response:** The facility is currently licensed by and in good standing with the Tennessee Department of Intellectual and Developmental Disabilities. The Applicant does not participate in an accreditation organization. Please see Attachment B – Contribution to the Orderly Development of Health Care – D1 for a copy of the facility's license.

- 2) For existing providers, please provide a copy of the most recent statement of deficiencies/plan of correction and document that all deficiencies/findings have been corrected by providing a letter from the appropriate agency.

**Response:** Please see Attachment B – Contribution to the Orderly Development of Health Care – D2 for the most recent statement of deficiencies and plan of correction that was accepted by the licensing agency. Please note that an October 25, 2017 letter from the Department of Intellectual and Developmental Disabilities indicating that the location is in compliance with applicable licensure rules has been provided as this is the only documentation received by the facility that its plan of correction was accepted and the facility is in good standing with no uncorrected deficiencies.

- 3) Document and explain inspections within the last three survey cycles which have resulted in any of the following state, federal, or accrediting body actions: suspension of admissions, civil monetary penalties, notice of 23-day or 90-day termination proceedings from Medicare/Medicaid/TennCare, revocation/denial of accreditation, or other similar actions.

**Response:** Not applicable.

- a) Discuss what measures the applicant has or will put in place to avoid similar findings in the future.

**Response:** Not applicable.

- E. Respond to all of the following and for such occurrences, identify, explain and provide documentation:

- 1) Has any of the following:

- a) Any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant);

b) Any entity in which any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%; and/or

c) Any physician or other provider of health care, or administrator employed by any entity in which any person(s) or entity with more than 5% ownership in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%.

**Response:** Not applicable.

2) Been subjected to any of the following:

- a) Final Order or Judgment in a state licensure action;
- b) Criminal fines in cases involving a Federal or State health care offense;
- c) Civil monetary penalties in cases involving a Federal or State health care offense;
- d) Administrative monetary penalties in cases involving a Federal or State health care offense;
- e) Agreement to pay civil or administrative monetary penalties to the federal government or any state in cases involving claims related to the provision of health care items and services; and/or
- f) Suspension or termination of participation in Medicare or Medicaid/TennCare programs.
- g) Is presently subject of/to an investigation, regulatory action, or party in any civil or criminal action of which you are aware.
- h) Is presently subject to a corporate integrity agreement.

**Response:** Not Applicable.

F. Outstanding Projects:

- 1) Complete the following chart by entering information for each applicable outstanding CON by applicant or share common ownership; and

**Outstanding Projects**

<b><u>CON Number</u></b>	<b><u>Project Name</u></b>	<b><u>Date Approved</u></b>	<b><u>*Annual Progress Report(s)</u></b>		<b><u>Expiration Date</u></b>
			<b><u>Due Date</u></b>	<b><u>Date Filed</u></b>	
CN1511-050	Open Arms Care Corporation dba Greeneville #1 Chuckey Pike	2/24/2016	4/1/2017	5/31/2017	4/1/2018
CN1511-051	Open Arms Care Corporation dba Hamilton County #2 Gamble Road - Southwest	2/24/2016	4/1/2017	5/31/2017	4/1/2018
CN1511-052	Open Arms Care Corporation dba Greeneville #3 East Church Street - East	2/24/2016	4/1/2017	5/31/2017	4/1/2018
CN1511-053	Open Arms Care Corporation dba Hamilton County #1 Gamble Road - Southeast	2/24/2016	4/1/2017	5/31/2017	4/1/2018
CN1511-054	Open Arms Care Corporation dba Greeneville #2 East Church Street - West	2/24/2016	4/1/2017	5/31/2017	4/1/2018



CN1512-062	Open Arms Care Corporation dba Knox County #1 Bishops Bridge Northeast	3/23/2016	5/1/2017	5/31/2017	5/1/2018
CN1512-063	Open Arms Care Corporation dba Knox County #2 Bishops Bridge Northwest	3/23/2016	5/1/2017	5/31/2017	5/1/2018
CN1512-064	Open Arms Care Corporation dba Knox County #4 South Northshore Drive Northwest	3/23/2016	5/1/2017	5/31/2017	5/1/2018
CN1512-065	Open Arms Care Corporation dba Knox County #3 South Northshore Drive Southeast	3/23/2016	5/1/2017	5/31/2017	5/1/2018

- \* Annual Progress Reports - HSDA Rules require that an Annual Progress Report (APR) be submitted each year. The APR is due annually until the Final Project Report (FPR) is submitted (FPR is due within 90 ninety days of the completion and/or implementation of the project). Brief progress status updates are requested as needed. The project remains outstanding until the FPR is received.

- 2) Provide a brief description of the current progress, and status of each applicable outstanding CON.

**Response:** The facilities constructed pursuant to each of the outstanding CONs have now been completed and approved for occupancy, and residents are now in such facilities. The Applicant is still working with the architect and contractor on final cost certifications, which are anticipated to be completed within the next 30 days. Annual Progress Reports have previously been submitted for such facilities, and the Final Project Report will be submitted after the final cost certifications are completed and verified.

G. Equipment Registry - For the applicant and all entities in common ownership with the applicant.

- 1) Do you own, lease, operate, and/or contract with a mobile vendor for a Computed Tomography scanner (CT), Linear Accelerator, Magnetic Resonance Imaging (MRI), and/or Positron Emission Tomographer (PET)?

**Response:** Not Applicable.

- 2) If yes, have you submitted their registration to HSDA? If you have, what was the date of submission?

**Response:** Not Applicable.

- 3) If yes, have you submitted your utilization to Health Services and Development Agency? If you have, what was the date of submission?

**Response:** Not Applicable.

**SECTION B: QUALITY MEASURES**

Please verify that the applicant will report annually using forms prescribed by the Agency concerning continued need and appropriate quality measures as determined by the Agency pertaining to the certificate of need, if approved.

**Response:** The Applicant will report annually using forms prescribed by the Agency concerning continued need and appropriate quality measures as determined by the Agency pertaining to the Applicant's requested certificate of need, if approved.

### **SECTION C: STATE HEALTH PLAN QUESTIONS**

T.C.A. §68-11-1625 requires the Tennessee Department of Health's Division of Health Planning to develop and annually update the State Health Plan (found at <http://www.tn.gov/health/topic/health-planning> ). The State Health Plan guides the State in the development of health care programs and policies and in the allocation of health care resources in the State, including the Certificate of Need program. The 5 Principles for Achieving Better Health are from the State Health Plan's framework and inform the Certificate of Need program and its standards and criteria.

Discuss how the proposed project will relate to the 5 Principles for Achieving Better Health found in the State Health Plan.

A. The purpose of the State Health Plan is to improve the health of the people of Tennessee.

**Response:** The proposed facility reflects this principle by ensuring that the Applicant may provide its residents the same high quality health care in a newer, safer, more supportive environment. The proposed facility will be constructed to comply with updated building codes, ensuring that residents will not have to endure the hassle and instability of renovations at their existing home. In addition, relocation to a more resident-friendly neighborhood will better support the comprehensive medical and social services the Applicant provides its residents. The Applicant will continue to provide residents with medical care in accordance with physician recommendations and on a more general, as-needed basis. These services address the full range of the residents' medical needs, including their mental and behavioral health. Depending on the resident and his or her medical needs, residents will receive assistance meeting hygiene requirements, specialized dietary services, physical therapy, and assistance with activities of daily living, as well as physical, occupational, and behavioral therapies. Residents will also have access to both planned and spontaneous activities, including vocational training and job coaching, which will be easier to access and enjoy in the safe and supportive environment of their new community.

B. People in Tennessee should have access to health care and the conditions to achieve optimal health.

**Response:** The Applicant will ensure that all residents continue to receive medical care in the manner and on the schedule prescribed by regulations and residents' physicians, as well as on an as-needed basis. Of note, the Applicant is one of only a few ICF/IID providers in Shelby County, and the proposed replacement facility will ensure that these eight beds remain available to Shelby County residents. While the Applicant has been able to adapt to the aging of its current facility, the Applicant would be able to provide that care more efficiently in the proposed newer facility, particularly once the revised building codes go into effect and the Applicant will be responsible for providing care while addressing the necessary updates. Additionally, the nature of residential care means that the quality of resident experiences will depend at least in part on the surrounding neighborhood. In light of the general decline in the area surrounding its existing facility, the Applicant believes this is the right time to move its operations to a more traditional residential area, where the calmer setting will ensure both easier access to services in the community and long-term quality of life for its residents.

- C. Health resources in Tennessee, including health care, should be developed to address the health of people in Tennessee while encouraging economic efficiencies.

**Response:** Providing support in an ICF/IID will be cost effective at the Applicant's proposed facility due to its strategic, thoughtful staffing, emphasis on preventive care, management oversight of resource utilization, and design of a home specifically dedicated to the Residents' needs. The Applicant's model will generate ongoing cost savings through its particular emphasis on preventive care and preservation of residents' existing mobility through therapy. Pairing ICF/IID homes to maximize economies of scale while maintaining a home-like environment is a common practice utilized by both public and private ICF/IIDs in the state, in large part because it permits providers like the Applicant to ensure both quality and efficiency. That the Applicant's facilities share a management company and physical address creates a range benefits, from the reduction of small, less-obvious fees like rates on lawn care to more impactful savings from the Applicant's ability to conduct joint internal visits and audits for both facilities, as opposed to having to make arrangements for two different locations. Additionally, through its nearly 30 years of experience, the Applicant will be able to put its expertise to work and take advantage of the economies of scale made possible by its many locations throughout the state, which will enable the Applicant to spend less money than would be spent by a less experienced applicant.

- D. People in Tennessee should have confidence that the quality of health care is continually monitored and standards are adhered to by providers.

**Response:** As a provider of ICF/IID services, the Applicant's services are overseen by both the state of Tennessee and the federal government. The Applicant is a decades-long ICF/IID services provider veteran and is well versed in satisfying these requirements and ensuring that its facilities and providers meet or exceed the important regulatory and licensure expectations and standards set out for them. The Applicant maintains a good relationship with its state and federal regulators. In addition, the Applicant's use of co-located facilities, a common management company, and reliance on a broad network of facilities across the state (including others in the Shelby County area) ensures that its providers participate in a constant, iterative system of checks and balances to ensure high quality resident care. Tennesseans can be confident that services offered at one of the Applicant's facilities have the backing of its experience and regulatory oversight.

- E. The state should support the development, recruitment, and retention of a sufficient and quality health workforce.

**Response:** The Applicant engages licensed and unlicensed personnel to provide the full range of medical and social services to the residents in its facilities. The Applicant's home-based model supports a cohesive approach to ensuring each individual receives the attention and care they need to function at their best. Moreover, by adding a new ICF/IID in the proposed service area, the Applicant will ensure that these services remain available to the community and that individuals interested in providing the services continue to come to the community to work.

## PROOF OF PUBLICATION

Attach the full page of the newspaper in which the notice of intent appeared with the mast and dateline intact or submit a publication affidavit from the newspaper that includes a copy of the publication as proof of the publication of the letter of intent.

## NOTIFICATION REQUIREMENTS

### **(Applies only to Nonresidential Substitution-Based Treatment Centers for Opiate Addiction)**

Note that T.C.A. §68-11-1607(c)(9)(A) states that "...Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the state representative and senator representing the house district and senate district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential substitution-based treatment center for opiate addiction has been filed with the agency by the applicant."

Failure to provide the notifications described above within the required statutory timeframe will result in the voiding of the CON application.

Please provide documentation of these notifications.

## DEVELOPMENT SCHEDULE

T.C.A. §68-11-1609(c) provides that a Certificate of Need is valid for a period not to exceed three (3) years (for hospital projects) or two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the Agency may, in granting the Certificate of Need, allow longer periods of validity for Certificates of Need for good cause shown. Subsequent to granting the Certificate of Need, the Agency may extend a Certificate of Need for a period upon application and good cause shown, accompanied by a non-refundable reasonable filing fee, as prescribed by rule. A Certificate of Need which has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the Agency, and is not subject to review, reconsideration, or appeal.

1. Complete the Project Completion Forecast Chart on the next page. If the project will be completed in multiple phases, please identify the anticipated completion date for each phase.
2. If the response to the preceding question *indicates that the applicant does not anticipate completing the project within the period of validity as defined in the preceding paragraph*, please state below any request for an extended schedule and document the "good cause" for such an extension.

## PROJECT COMPLETION FORECAST CHART

Assuming the Certificate of Need (CON) approval becomes the final HSDA action on the date listed in Item 1. below, indicate the number of days from the HSDA decision date to each phase of the completion forecast.

<u>Phase</u>	<u>Days Required</u>	<u>Anticipated Date [Month/Year]</u>
1. Initial HSDA decision date		February 2018
2. Architectural and engineering contract signed	0	February 2018
3. Construction documents approved by the Tennessee Department of Health	60	April 2018
4. Construction contract signed	0	April 2018
5. Building permit secured	30	May 2018
6. Site preparation completed	30	June 2018
7. Building construction commenced	5	June 2018
8. Construction 40% complete	45	August 2018
9. Construction 80% complete	60	October 2018
10. Construction 100% complete (approved for occupancy)	45	December 2018
11. *Issuance of License	20	January 2019
12. *Issuance of Service	15	February 2019
13. Final Architectural Certification of Payment	45	March 2019
14. Final Project Report Form submitted (Form HR0055)	30	April 2019

\*For projects that **DO NOT** involve construction or renovation, complete Items 11 & 12 only.

**NOTE: If litigation occurs, the completion forecast will be adjusted at the time of the final determination to reflect the actual issue date**

**PROOF OF PUBLICATION**

**TO BE SUPPLIED UPON RECEIPT**

**Attachment A – 3C**

**Consent Calendar Request**



**Michael D. Brent**

Partner  
mbrent@bradley.com  
615.252.2361 direct



November 15, 2017

Ms. Melanie M. Hill  
Tennessee Health Services & Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, Tennessee 37243

Dear Melanie:

Enclosed you will find an original, plus two copies, of a CON Application by Open Arms Care Corporation, for the replacement and relocation of an eight-person Intermediate Care Facility for Individuals with Intellectual Disabilities ("ICF/IID"). The current facility is located at 5350 Benjestown Road, Memphis (Shelby County), Tennessee 38127, and will be relocated to a lot of approximately 4.1 acres near the intersection of Dexter Road and Dexter Lane, in Shelby County, Tennessee. As we have previously discussed with your staff, given the nature of this application, and the fact this is a replacement of a facility that has been in operation nearly three decades by this applicant, we request that you give consideration to placing this application on the "Consent Calendar."

Should you have any questions or need anything further, please do not hesitate to contact me.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

A handwritten signature in blue ink, appearing to read "Michael D. Brent", written over the printed name.

Michael D. Brent

MDB/cae

**Attachment A - 4**

**List of Open Arms Facilities**

**OPEN ARMS CARE CORPORATION TENNESSEE FACILITIES**

<b>Institutional Habilitation – MR Licensed Facilities</b>						
<b>Address</b>	<b>City</b>	<b>County</b>	<b>Zip</b>	<b>Licensed Beds</b>	<b>Medicaid Number</b>	<b>DIDD License Number</b>
6850 Burkitt Road	Antioch	Davidson	37013	8	744-7059	L000000013139
6854 Burkitt Road	Antioch	Davidson	37013	8	744-7058	L000000013138
5821 Cane Ridge Road	Antioch	Davidson	37013	8	744-7063	L000000013140
5825 Cane Ridge Road	Antioch	Davidson	37013	8	744-7064	L000000013141
2411 Miller St	Nashville	Davidson	37211	8	744-7055	L000000013142
2415 Miller St	Nashville	Davidson	37211	8	744-7056	L000000013143
6120 Mt. Pisgah Road	Nashville	Davidson	37211	8	744-7057	L000000013137
13312 Old Hickory Blvd	Antioch	Davidson	37013	8	744-7065	L000000013136
3997 Chuckey Road	Chuckey	Greene	37641	4	744-7248	L000000015457
1404 East Church Street	Greeneville	Greene	37745	4	744-7246	L000000015413
1406 East Church Street	Greeneville	Greene	37745	4	744-7244	L000000015410
10535 N. Hwy 58	Ooltewah	Hamilton	37363	8	744-7070	L000000013701
10539 N. Hwy 58	Ooltewah	Hamilton	37363	8	744-7071	L000000013702
11419 N. Hwy 58	Georgetown	Hamilton	37336	8	744-7062	L000000013703

Institutional Habilitation – MR Licensed Facilities						
Address	City	County	Zip	Licensed Beds	Medicaid Number	DIDD License Number
11421 N. Hwy 58	Georgetown	Hamilton	37336	8	744-7060	L000000013704
7841 Sims Road	Harrison	Hamilton	37341	8	744-7069	L000000013705
7845 Sims Road	Harrison	Hamilton	37341	8	744-7068	L000000013706
9253 Snow Hill Road	Ooltewah	Hamilton	37363	8	744-7066	L000000013707
9255 Snow Hill Road	Ooltewah	Hamilton	37363	8	744-7067	L000000013708
7817 Gamble Road	Georgetown	Hamilton	37336	4	744-7254	L000000015538
7815 Gamble Road	Georgetown	Hamilton	37336	4	744-7253	L000000016887
7812 Ball Camp Pike	Knoxville	Knox	37931	8	744-7052	L000000013746
7814 Ball Camp Pike	Knoxville	Knox	37931	8	744-7053	L000000013748
6010 Clayberry Dr	Knoxville	Knox	37931	8	744-7042	L000000013750
6011 Clayberry Dr	Knoxville	Knox	37931	8	744-7043	L000000013749
6505 Emory Road	Knoxville	Knox	37931	8	744-7050	L000000012989
6509 Emory Road	Knoxville	Knox	37931	8	744-7051	L000000012990
5407 Western Ave.	Knoxville	Knox	37921	8	744-7048	L000000013752

Institutional Habilitation – MR Licensed Facilities						
Address	City	County	Zip	Licensed Beds	Medicaid Number	DIDD License Number
5411 Western Ave.	Knoxville	Knox	37921	8	744-7049	L000000013751
1811 Bishops Bridge Road	Knoxville	Knox	37922	4	744-7247	L000000015456
1819 Bishops Bridge Road	Knoxville	Knox	37922	4	744-7245	L000000015416
12625 S. Northshore Drive	Knoxville	Knox	37922	4	744-7250	L000000015463
12629 S. Northshore Drive	Knoxville	Knox	37922	4	744-7251	L000000015523
4695 Allendale Dr.	Memphis	Shelby	38128	8	744-7046	L000000013496
4707 Allendale Dr.	Memphis	Shelby	38128	8	744-7047	L000000013497
5350 Benjestown Road	Memphis	Shelby	38128	8	744-7037	L000000013495
5380 Benjestown Road	Memphis	Shelby	38128	8	744-7038	L000000013494
1445 Greendale Ave.	Memphis	Shelby	38127	8	744-7039	L000000013498
1457 Greendale Ave.	Memphis	Shelby	38127	8	744-7040	L000000013499
4240 Raleigh-Millington Road	Memphis	Shelby	38128	8	744-7044	L000000013500

Institutional Habilitation – MR Licensed Facilities						
Address	City	County	Zip	Licensed Beds	Medicaid Number	DIDD License Number
4254 Raleigh-Millington Road	Memphis	Shelby	38128	8	744-7045	L000000013501

Licensed Day Treatment Centers						
Address	City	County	Zip	Licensed Beds	Medicaid Number	DIDD License Number
6711 Mountain View Road	Ooltewah	Hamilton	37363	N/A	N/A	L000000012791
5731 Ooltewah-Ringgold Road	Ooltewah	Hamilton	37363	N/A	N/A	L000000012792
7810 Ball Camp Pike	Knoxville	Knox	37931	N/A	N/A	L000000013747
5120 Yale Road	Memphis	Shelby	38134	N/A	N/A	L000000013486
2020 Johnson Industrial Blvd.	Nolensville	Williamson	37135	N/A	N/A	L000000013144

**Attachment A - 4A**

**Organizational Documents**



**Tre Hargett**  
Secretary of State

**Division of Business Services**  
**Department of State**  
State of Tennessee  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102

BRADLEY ARANT BOULT CUMMINGS LLP  
1600 DIVISION STREET SUITE 700  
NASHVILLE, TN 37203

October 11, 2017

Request Type: Certificate of Existence/Authorization  
Request #: 0253509

Issuance Date: 10/11/2017  
Copies Requested: 1

Document Receipt

Receipt #: 003612622

Filing Fee: \$20.00

Payment-Credit Card - State Payment Center - CC #: 3712856250

\$20.00

Regarding: OPEN ARMS CARE CORPORATION

Filing Type: Nonprofit Corporation - Foreign

Control #: 214758

Formation/Qualification Date: 04/14/1989

Date Formed: 12/29/1986

Status: Active

Formation Locale: GEORGIA

Duration Term: Perpetual

Inactive Date:

CERTIFICATE OF AUTHORIZATION

I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that effective as of the issuance date noted above

OPEN ARMS CARE CORPORATION

- \* a Corporation formed in the jurisdiction set forth above, is authorized to transact business in this State;
- \* has paid all fees, taxes and penalties owed to this State (as reflected in the records of the Secretary of State and the Department of Revenue) which affect the existence/authorization of the business;
- \* has filed the most recent annual report required with this office;
- \* has appointed a registered agent and registered office in this State;
- \* has not filed an Application for Certificate of Withdrawal.

Tre Hargett  
Secretary of State

Processed By: Cert Web User

Verification #: 024541823



# STATE OF GEORGIA

## Secretary of State

Corporations Division

313 West Tower

2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

### CERTIFICATE OF EXISTENCE

I, **Brian P. Kemp**, the Secretary of State of the State of Georgia, do hereby certify under the seal of my office that

#### OPEN ARMS CARE CORPORATION

a Domestic Nonprofit Corporation

was formed in the jurisdiction stated below or was authorized to transact business in Georgia on the below date. Said entity is in compliance with the applicable filing and annual registration provisions of Title 14 of the Official Code of Georgia Annotated and has not filed articles of dissolution, certificate of cancellation or any other similar document with the office of the Secretary of State.

This certificate relates only to the legal existence of the above-named entity as of the date issued. It does not certify whether or not a notice of intent to dissolve, an application for withdrawal, a statement of commencement of winding up or any other similar document has been filed or is pending with the Secretary of State.

This certificate is issued pursuant to Title 14 of the Official Code of Georgia Annotated and is prima-facie evidence that said entity is in existence or is authorized to transact business in this state.

Docket Number : 14929940  
Date Inc/Auth/Filed: 12/29/1986  
Jurisdiction : Georgia  
Print Date : 10/11/2017  
Form Number : 211



*B. P. Kemp*

Brian P. Kemp  
Secretary of State

J704339  
33420756

ARTICLES OF AMENDMENT  
TO THE  
ARTICLES OF INCORPORATION  
OF  
OPEN ARMS CARE CORPORATION

1.

The name of the corporation is Open Arms Care Corporation (the "Corporation").

2.

Effective on the date of filing these Articles of Amendment, a new Article XII shall be deemed added to the Articles of Incorporation, which shall read as follows:

"XII.

No director of the Corporation shall have any liability to the Corporation or to its members, if any, for monetary damages for any action taken, or any failure to take any action, as a director, except liability:

- (A) For any appropriation, in violation of his or her duties, of any business opportunity of the Corporation;
- (B) For acts or omissions which involve intentional misconduct or a knowing violation of law;
- (C) For the types of liability set forth in Sections 14-3-860 through 14-3-864 of the Official Code of Georgia Annotated; or
- (D) For any transaction from which the director received an improper personal benefit.

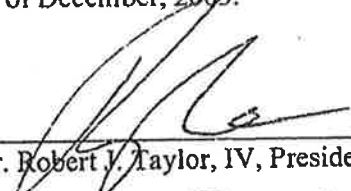
Provided, however, that the provisions of this Article XII shall not be effective for any act or omission occurring prior to December 5, 2003."

3.

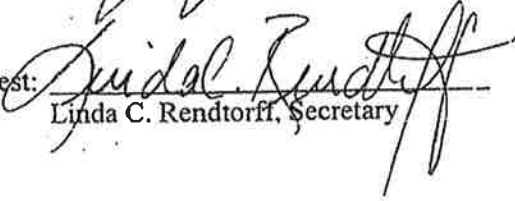
These Articles of Amendment were adopted by the Board of Directors of the Corporation on December 5, 2003.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed by its duly authorized officers this 5th day of December, 2003.

By:

  
Mr. Robert J. Taylor, IV, President

Attest:

  
Linda C. Rendtorff, Secretary

SECRETARY OF STATE

2003 DEC -8 P 1:27

CORPORATIONS DIVISION

ARTICLES OF AMENDMENT  
TO THE  
ARTICLES OF INCORPORATION  
OF  
REBOUND CARE CORPORATION

003130979  
5704339  
002940187 (WR)

1.

The name of the corporation is Rebound Care Corporation (the "Corporation").

2.

Effective the date of filing this Articles of Amendment, Article I of the Articles of Incorporation of the Corporation is amended by deleting the existing Article I in its entirety, and by substituting the following therefor:

1.

The name of the corporation is Open Arms Care Corporation (the "Corporation").

3.

This amendment was unanimously adopted by the board of directors of the Corporation as of November 2, 2000.

4.

Action by the members of the Corporation was not required for the adoption of this amendment.

5.

The undersigned hereby certifies that the request for publication of a notice of intent to file Articles of Amendment to change the name of Rebound Care Corporation to Open Arms Care Corporation and payment therefor have been made as required by Section 14-3-1005.1 of the Georgia Nonprofit Corporation Code.

IN WITNESS WHEREOF, the Corporation has caused this Articles of Amendment to be executed by its duly authorized officer as of November 2, 2000.

REBOUND CARE CORPORATION

RECEIVED NOV 10 2000

NOTICE - 5 PM 1:29

SECRETARY OF STATE

By: 

Name:

ROBERT J. TAYLOR

Title:

PRESIDENT



# CERTIFICATE

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF

REBOUND CARE CORPORATION

THIS DOCUMENT RECEIVED  
AND FILED IN THE OFFICE  
OF THE SECRETARY OF STATE

BY: Sandra Shaw

DATE: 3/27/89

TRANSACTION # 89086112

CHARTER # Y704339

WE, the undersigned, James P. Kelly and Brynda J. Baker,  
being respectively the President and Secretary of REBOUND  
CARE CORPORATION, a corporation incorporated on December 29,  
1986, under the laws of the State of Georgia and assigned  
Charter Number 8704339, do hereby certify as follows:

1. The name of the corporation is REBOUND CARE CORPORATION (the "Corporation").

2. The Corporation is organized pursuant to the Georgia Business Corporation Code.

3. These Amended and Restated Articles of Incorporation of the Corporation were authorized by the directors and shareholders of the Corporation by unanimous written consent dated January 3, 1989.

4. These Amended and Restated Articles of Incorporation restate and integrate and further amend the provisions of the original Articles of Incorporation, as heretofore amended, by providing for the conversion of the Corporation to a non-profit corporation organized pursuant to the provisions of the Georgia Nonprofit Corporation Code.

5. The text of the Articles of Incorporation, as restated and integrated and as further amended hereby, is restated to read as herein set forth in full:

I.

Name

The name of the Corporation shall be:

REBOUND CARE CORPORATION.

II.

Nonprofit Corporation

The Corporation shall be a nonprofit corporation organized and operated under the Georgia Nonprofit Corporation Code.

III.

Perpetual Duration

The period of duration of the corporation shall be perpetual.

IV.

Charitable Purposes

The Corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The Corporation shall serve only such purposes and functions and shall engage only in such activities as are consonant with

the purposes set forth in this Article IV and as are exclusively charitable and are entitled to charitable status under Section 501(c)(3) of the Internal Revenue Code.

V.

Publicly Supported Tax-Exempt Nonprofit Corporation

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

It is intended that the Corporation shall have, and continue to have, the status of an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and which is other than a private foundation within the meaning of Section 509(a) of the Internal Revenue Code. All terms and provisions of these Articles of Incorporation and the Bylaws of the corporation and all authority and operations of the Corporation, shall be construed, applied and carried out in accordance with such intent.

## VI.

### Board of Directors

The Board of Directors shall have general charge of the affairs and any property and assets of the Corporation. It shall be the duty of the directors to carry out the purposes and functions of the Corporation. The directors shall be elected in accordance with the Bylaws of the Corporation and shall have the powers and duties set forth in these Articles of Incorporation and in the Bylaws, to the extent that such powers and duties are not inconsistent with the status of the Corporation as a nonprofit corporation which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and which is other than a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.



The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code.

The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code.

The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code.

The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code.

The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

## VII.

### Members

The Board of Directors of the Corporation shall have the power to admit members to the Corporation in such manner, subject to such qualifications, and upon such terms and conditions and with such rights and privileges as may be provided from time to time in the Bylaws of the Corporation and as are not inconsistent with any provision of these Articles of Incorporation. Members may be divided into one or more classes.

## VIII.

### Dissolution

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code, as the Boards of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Superior Court of Fulton County, Georgia exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

## IX.

### Powers

Except as limited and prescribed by the specific provisions of these Articles, the Corporation shall exercise all powers which now or hereafter may be conferred by law upon a nonprofit corporation organized for the purposes hereinabove set forth, including the power to enter into any

contract of guaranty, suretyship, or endorsement where the corporation guaranteeing has no direct interest in the subject matter of the contract guaranteed as well as the power to make any purely accomodation guaranty, endorsement or contract of suretyship.

The Corporation shall have the power to indemnify its officers, directors, employees and agents and to purchase and maintain liability insurance on their behalf, to the extent provided in and subject to the limitations of the Georgia Nonprofit Corporation Code.

The Corporation shall have power to receive and accept donations, in money or in property, either without restriction, or restricted to such purposes as the donor may provide, provided such purpose is within the purpose of this Corporation, and any such restricted donations shall be used for the purposes to which restricted. Any such donation or contribution may be designated as a memorial and, in such case, the Director shall designate an appropriate memorial.

#### X.

##### Definitions

For purposes of these Articles of Incorporation, "charitable purposes" include charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, contributions for which are deductible under Section

170(c)(2) of the Internal Revenue Code. All references in these Articles of Incorporation to sections of the Internal Revenue Code shall be considered references to the Internal Revenue Code of 1986, as from time to time amended, and to the corresponding provisions of any applicable future United States Internal Revenue Law, and to all regulations issued under such sections and provisions.

## XI.

### Amendments

These Articles of Incorporation may be amended at any time and from time to time by the affirmative vote of a majority of all of the directors then in office.

6. The vote of a majority of the shareholders entitled to vote thereon is required to amend the Articles of Incorporation. The foregoing Amended and Restated Articles of Incorporation of the Corporation were adopted by the unanimous written consent of the holders of all of the Corporation's six hundred (600) shares outstanding and entitled to vote thereon.

7. These Amended and Restated Articles of Incorporation supersede the original articles of incorporation as heretofore amended.

IN WITNESS WHEREOF, REBOUND CARE CORPORATION, has caused these Amended and Restated Articles of Incorporation to be executed and its corporate seal to be affixed and has caused same to be attested, all by its duly authorized officers, on the 22<sup>nd</sup> day of March, 1989.

REBOUND CARE CORPORATION

By

James P. Kelly  
James P. Kelly  
President

ATTEST:

Brynda J. Baker  
Brynda J. Baker  
Secretary

(CORPORATE SEAL)

Mar 23 9 16 AM '89  
SECRETARY OF STATE

**Attachment A - 5**

**Management Agreement**

# **AGREEMENT TO PROVIDE MANAGEMENT SERVICES**

*OPEN ARMS-Shelby #3*

\_\_\_\_ *Dexter Road and Dexter Lane, Cordova (Shelby County), Tennessee 38016*

**Integra Resources, LLC, Manager**

**and**

**Open Arms Care Corporation, doing business as**

**OPEN ARMS--\_\_\_\_Old Dexter Road, Owner**





## MANAGEMENT AGREEMENT

OPEN ARMS--\_\_\_\_ Old Dexter Road

THIS MANAGEMENT AGREEMENT ("Agreement"), effective as of \_\_\_\_\_, 2017, between OPEN ARMS CARE CORPORATION, a Georgia nonprofit corporation, doing business as OPEN ARMS--\_\_\_\_ Old Dexter Road ("Open Arms"), and INTEGRA RESOURCES, LLC, a Tennessee limited liability company ("Integra").

### RECITALS:

WHEREAS, Open Arms, desires to provide for management of a facility providing intermediate care services for individuals with intellectual disabilities ("ICF/IID") located at \_\_\_\_\_ Dexter Road and Dexter Lane, Cordova (Shelby County), Tennessee 38016, commonly referred to as OPEN ARMS----\_\_\_\_ Old Dexter Road (the "Facility") by Integra; with a Facility-specific TennCare provider number to be issued by the State of Tennessee after the Certification Date (as defined in the Lease described below); and

WHEREAS, Integra desires to be engaged by Open Arms to provide such services;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

1. **Open Arms as Provider.** Open Arms, as the official provider of record for TennCare/Medicaid purposes, shall hold all authorizations and licenses necessary or incidental thereto with respect to the Facility. Notwithstanding any other provision to the contrary herein contained, Open Arms shall at all times exercise ultimate control over the assets and operation of the Facility. It is understood and agreed that the relationship between the parties hereto is that of independent contractors, and nothing herein contained shall be deemed to create or authorize the creation of the relationship of partnership or joint venture between said parties.

2. **Integra's Obligations.** In accordance with the provisions of this Agreement, Integra shall assume day to day operational responsibility for each Facility and shall manage and operate the Facility efficiently in accordance with the standards prevailing in the ICF/IID industry. Without limitation, during the term of Integra's management of the Facility hereunder, Integra shall perform the following specific management services for Open Arms with respect to the Facility:

(a) In general, manage the Facility so as to meet all requirements of state and federal licensing, and reimbursement certification (as well as to meet the prevailing standards for applicable quality assurance and accreditation groups pertaining to the Facility), all as applicable to an ICF/IID facility, and provide care for the Facility's residents, which care shall include but shall not be limited to the providing or monitoring of:

- (i) the medical and psychological condition of the residents, including maintenance of medical records;
- (ii) the activities, both personal and familial, of the residents;
- (iii) the dietary requirements of the residents;
- (iv) physical therapy and day services programs for the residents; and
- (v) the quality of life of the residents.

(b) Provide care and treatment to all of the Facility's residents, protecting their rights pursuant to applicable state and federal law, including laws pertaining to safe-guarding and accounting for residents' personal funds.

(c) Maintain each Facility and its premises in a state of good operating condition and repair, reasonable wear and tear excepted, and in a manner that conforms to the obligations of Open Arms pursuant to a Lease Agreement dated as of \_\_\_\_\_, 2018 between Open Arms, as tenant, and Facilities Development Group, LLC, as landlord ("Landlord") (the "Lease"), and the Omnibus Agreement for Leases, dated as of the date hereof, between Open Arms and Facilities Development Group, LLC, (the "Omnibus Agreement").

(d) Provide well-qualified Integra employees to serve as the Market Area Director for the area where the Facility is located, senior "home office" management staff and other staff, all as required to meet Integra's obligations under this Agreement, which employees will have overall authority for the day to day operation and management of the Facility. The remaining day-to-day staff of the Facility, including the Facility administrator or director, shall consist of employees of Open Arms, provided, however, that Integra shall have full authority within the scope of this Agreement and the applicable approved annual Budget, to manage, hire, train, determine compensation for and, at Integra's discretion, fire such staff and employees. Integra covenants that it shall not discriminate against any such employee or any member of such staff, or applicant therefor, because of race, religion, color, national origin, sex, handicap, military status, age, or any other basis protected by law, all in accordance with applicable law.

(e) Subject to the limitations of Section 5 hereof, purchase on commercially reasonable terms in Open Arms' name and behalf, all equipment, repairs, improvements, furniture and fixtures required for the efficient operation of the Facility and to maintain the Facility in a state of good operating condition and repair, commensurate with the standards and quality of other similar facilities.

(f) Subject to the limitations of Sections 4(b) and 5 hereof, contract with third parties, at commercially reasonable terms and rates, in Open Arms' name and behalf, for the rendition of the following services to Open Arms and to clients of Open Arms: (i) therapy services, e.g. occupational, speech and physical; (ii) medical services, e.g. medical doctors, nurses, pharmacists, psychologists, dentists and dieticians; and (iii)

services related to maintenance of heating, ventilation and air conditioning, plumbing, security and other building and equipment systems, alarms, telecommunication systems, vehicles and copiers, all such services to be rendered at the Facility in the ordinary course of business (hereinafter referred to as "Routine Services"). Additionally, with the prior written consent of Open Arms, which shall not be unreasonably withheld, Integra may sub-contract its management duties in the areas of ancillary services, financial services, accounting services, human relations services, staff development services, governmental relations and policy and forms development to one or more sub-contractors reasonably chosen by Integra, and which may be related to Integra (with any costs associated with such sub-contracting to be the sole expense of Integra). Otherwise, with respect to its obligations hereunder, Integra shall not contract with any Affiliate of Integra or its officers or directors. For purposes of this Agreement, an Affiliate shall mean any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Integra. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Integra, whether through the ownership of voting securities, by contract or otherwise ("Affiliate"). Integra's authority to contract under this Section 2(f) shall include the authority to amend, modify or terminate any such contract.

(g) Integra will on a regular basis direct and coordinate the development of operational policies and procedures for the Facility and submit such recommendations to Open Arms for its input, review and approval. Integra will annually review and, as appropriate, prepare recommendations as to changes in operational policies and procedures for the Facility and submit such recommendations to Open Arms for its review and approval. Said policies and procedures shall meet all applicable state and federal licensing and reimbursement certification requirements, as well as the requirements of such quality assurance and accreditation groups as may have jurisdiction over the Facility.

(h) Perform all accounting, bookkeeping, and record keeping functions to enable Open Arms to meet the financial reporting, record keeping, and budgetary requirements of (x) the Lease (and any lender to the Landlord, as may be required by the Lease) (y) all applicable statutes, rules or regulations of governmental agencies and (z) Open Arms as described in this Agreement. All such reporting and record keeping shall be maintained on a calendar year, accrual basis. Integra shall arrange for the timely annual audit of the financial statements of Open Arms, and the preparation of the cost reports for the Facility by a nationally recognized firm of independent certified public accountants selected by Open Arms. The accounting and other services to be performed by Integra hereunder or under Integra's supervision with respect to the Facility shall include, but not be limited to the following:

- (i) The preparation of monthly financial statements of operations and statistical reports for the Facility and combined monthly statements of operations for the Facility to be submitted to Open Arms within twenty-five (25) days after the end of each month.

- (ii) The maintenance of all records for resident billing, billing for all accounts receivable and (to the extent practicable without undue expenditure of funds) collection of same and recommendations to Open Arms for write-offs of uncollectible accounts receivable or contracted adjustments and the reasons for such recommendations.
- (iii) The maintenance of all records for accounts payable and the payment of the same.
- (iv) The preparation of support schedules and analyses for TennCare/Medicaid cost reports and Federal Form 990 information returns; and the review of Federal Form 990 returns and TennCare/Medicaid cost reports as prepared by external auditors.
- (v) The preparation of all necessary reports and returns for all sales, use, ad valorem (for both real and personal property) and occupancy taxes.
- (vi) The maintenance of a complete general ledger recording and summarizing the transactions of the Facility.
- (vii) The maintenance of any other records required by the Lease.
- (viii) The maintenance of records relating to the budgeting, approval, purchase, payment and reimbursement for capital improvement items (whether paid from the Reserve, the Depreciation Reserve Fund, or from capital improvement term loan advances (all as defined and described in the Omnibus Agreement, collectively "Capital Expenditures"); the generation and distribution of monthly reports on activity, and the preparation of reimbursement requests.
- (ix) By the 25th day of the month following each calendar quarter and by the 25<sup>th</sup> day after each change in the Budget (as defined in Section 2(i) hereof), the delivery to Open Arms of a written report and analyses showing calculations with respect to Open Arms' compliance with each rate and liquidity covenant in the Lease for the period(s) in question.
- (x) No later than the 25th day following the end of each calendar quarter, Integra shall prepare and submit to Open Arms a proposed quarterly cash flow budget projecting cash receipts and disbursements for the fifteen (15) months that begin with that quarter, based on the proposed operating and capital budgets, together with recommendations as to the use of projected cash flow in excess of short-term operating requirements and/or as to the sources and amounts of additional cash flow that may be required

to meet operating requirements and capital requirements. Integra shall revise the cash flow budget quarterly and submit said revised cash flow budget to Open Arms in accordance with the schedule described above in this Section h(x).

(i) The Facility annual operating budget (the “Budget”) for the calendar year 2017 shall be attached hereto as Exhibit A, after finalization and approval in writing by each party hereto on or before the Certification Date. For each subsequent calendar year, Integra shall prepare and submit to Open Arms, no later than sixty (60) days before the beginning of each subsequent calendar year (unless a written extension of no more than twenty (20) days is granted by Open Arms), a proposed Facility annual budget, in the same format as Exhibit A, covering the operation of the Facility as follows:

- (i) An annual operating budget setting forth an estimate of consolidated operating revenues and expenses of the Facility for the next calendar year, together with an explanation of anticipated changes in Facility utilization, reimbursement rates, staffing plan, scheduled training plan, non-wage costs, and all other factors differing significantly from the current year.
- (ii) A three-year cash flow budget projecting cash receipts and disbursements for the next twelve (12) calendar quarters based on proposed operating and capital budgets, together with recommendations as to the use of projected cash flow in excess of operating requirements and/or as to the sources and amounts of additional cash flow that may be required to meet operating requirements and capital requirements.
- (iii) An annual capital needs budget setting forth an estimate of anticipated capital expenditures anticipated to be needed for the Facility for the next calendar year, to be presented to the Landlord pursuant to the Lease.
- (iv) At any other time that Integra reasonably determines that a current budget is not feasible, Integra shall submit promptly a revised budget to Open Arms for approval, together with a written explanation of the basis for any modification from the budget previously approved by Open Arms. Open Arms shall not unreasonably withhold its approval of the budgets (including any revised budget) submitted by Integra. In the event Open Arms fails to approve a budget submitted by Integra for any subsequent year, the operating budget for such year will be the budget of the previous year plus a three percent (3%) escalation of the total amount thereof.

(j) Use its best efforts to operate the Facility in accordance with the provisions of the Budgets submitted to and approved in writing by Open Arms.

(k) Subject to the limitations of Section 16 hereof, act as Open Arms' agent and diligently and competently represent Open Arms in any matter involving operational issues, management issues, governmental issues, legislative issues and administrative issues, after promptly notifying Open Arms in writing of any such matter (other than notification of such matters that are reasonably deemed immaterial by Integra in scope and occur in the ordinary course of business, which notification shall not be required), said matters to include but not be limited to (i) any actions or determinations of or before any governmental agencies, including but not limited to those related to licensure of Open Arms or the Facility and TennCare/Medicaid rate adjustments; (ii) ad valorem tax liabilities or valuation determinations; (iii) EEOC issues or complaints or (iv) contracts necessary to perform day to day operational responsibilities.

(l) Operate the Facility in accordance with Open Arms' obligations under the Lease and other third-party contracts related to the operation of the Facility, and properly and punctually will perform all of Integra's obligations under this Agreement, unless otherwise directed by Open Arms, in a manner to cause Open Arms' compliance with its obligations under the Lease and said third-party contracts. Except as otherwise set forth herein, including but not limited to Section 5 hereof, Integra shall have no obligation to be financially responsible for funding any Costs of Operation (as that term is defined in Section 4(b)) or for funding the cost of any repairs, renewals or replacements, or make any payments under the terms of the Lease except from Open Arms' funds unless the need for any such payment, repair, renewal or replacement arises as a result of the negligence, malfeasance or breach of this Agreement by Integra. Nothing herein shall constitute a guarantee by Integra that the Facility, whether individually or collectively, will be able to meet the covenants or requirements set forth in the Lease or any other level of financial performance.

(m) Cause its representatives reasonably requested by Open Arms to attend quarterly meetings of the Board of Directors of Open Arms (and such other meetings of such Board as Open Arms may reasonably request) for the purpose of providing information and advice concerning the management of and issues related to the Facility. The direct out-of-pocket costs and expenses of attending any such meetings shall be deemed a part of the Costs of Operation.

(n) Arrange for architectural, engineering, and construction services in connection with any and all subsequent capital improvements to the Facility, and diligently oversee on behalf of Open Arms the construction of such capital improvements.

(o) Manage the Facility in a manner consistent with the maintenance of Open Arms' section 501(c)(3) status. In particular, but without limitation, Integra shall not evict any resident from the Facility for inability to pay any fees or charges without the prior written consent of Open Arms.

(p) Engage in all governmental and community relations activities which are reasonably appropriate for the successful reputation and operation of the Facility, and

maintain good communications with governmental and other organizations, in regard to the operation and management of the Facility.

(q) Subject to the limitations of Section 5 hereof and Open Arms' prior written approval, contract, at commercially reasonable terms and rates, in Open Arms' name and behalf, for the following:

- (i) Insurance, including commercial auto, general and professional liability, workers compensation, property, excess liability and fidelity;
- (ii) Employee benefits, including medical/hospital and life insurance for the Open Arms employees. Integra will coordinate audits necessary to verify the accuracy of submissions estimates and will provide the necessary policy maintenance services as required by the insurance carrier and the provisions of the insurance contracts.

(r) In conjunction with each insurance policy renewal or change in insurance coverage, provide Open Arms with a written understandable explanation of the new coverage's insurance benefits, claims procedures, and other pertinent information related to the new coverage, as well as the cost and experience history for the immediately preceding insurance coverage provided to Open Arms' employees.

(s) No later than the 30th day following the end of each month, provide Open Arms' Board of Directors with a written review of current operations, including information concerning periodic service reviews performed by Integra, and such other operational reporting reasonably sufficient for Open Arms' oversight responsibilities, including reporting of surveys, response to surveys, abuse reports and other special concerns.

Notwithstanding anything herein to the contrary, Open Arms shall have all the requisite power and authority to operate the Facility as shall be required by the State of Tennessee at the level of power and authority to be possessed by the licensed operator of a facility such as the Facility in the State of Tennessee.

Notwithstanding the foregoing, Integra may begin assisting with the transition of the Facility to the services to be provided pursuant to this Agreement up to fifteen (15) days in advance of the effective date of this Agreement.

3. **Open Arms' Rights and Obligations.** During the term of Integra's management of the Facility hereunder, the obligations of Open Arms with respect to the management of the Facility shall consist of the following:

(a) In writing during the second quarter of each calendar year, and orally at each meeting of Open Arms' Board of Directors, to furnish to Integra a report on the goals and general policies of Open Arms and their implementation, as well as procedural guidance and direction for the operation of the Facility. Additionally, Open Arms shall

periodically appoint and replace, in the discretion of Open Arms, individuals to serve on any "joint operating committee" for the Facility or similar group to oversee and offer advice to Integra with respect to the day-to-day operations of the Facility.

(b) At any time and from time to time, to examine, observe, and inspect the Facility, and any and all records and reports applicable thereto and to the services and functions of Integra.

(c) To consider the approval of the Budgets and annual plans submitted by Integra for the operation of the Facility, which approval shall not be unreasonably withheld.

(d) With the recommendation and assistance of Integra, to establish operating policies, standards of operation, admission policies, standards of service and maintenance and resident rates and other charges for the Facility's residents. Further, Open Arms, as Lessee, agrees to use diligent good faith efforts to comply with all of its obligations set forth in the Lease, without limitation on Integra's contractual obligations to effect such compliance on Open Arms' behalf.

(e) To assist with the establishment of policies affecting the Facility or the operation thereof which are not inconsistent with the responsibilities assigned to Integra under the terms of this Agreement.

(f) To play an active role in promoting the good will and public image of the Facility; their residents and, to the extent appropriate, Integra.

(g) To cooperate with Integra in executing all forms and returns required pursuant to applicable taxing statutes, rules and regulations and applicable governmental reimbursement programs.

(h) To use diligent good faith efforts to maintain its status as a corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") and which is not a private foundation.

(i) To maintain its status as provider of record within the State of Tennessee, including but not limited to maintaining records and Board of Directors minutes addressing goals and services actually received under this Agreement, and the continuing need and effectiveness of such services.

Notwithstanding anything herein to the contrary, Open Arms shall have all the requisite power and authority to operate the Facility as shall be required by the State of Tennessee at the level of power and authority to be possessed by the licensed operator of a facility such as the Facility in the State of Tennessee.



**4. Revenues, Costs of Operations and Management Fee.**

(a) During the term of Integra's management of the Facility hereunder, all revenues payable to the Facility shall be deposited into and paid out of one or more bank accounts established by Integra on behalf of Open Arms at a financial institution selected by Integra and approved by Open Arms and Facility Mortgagee under the Lease, which approval shall not be unreasonably withheld, all in accordance with the provisions of any "Deposit Account Control Agreement" ("DACA") or similar agreement required pursuant to the Lease. Such revenues and other amounts shall be utilized for the payment of the following items on a monthly basis in the following order of priority: (i) the Costs of Operation; (ii) payments of rent; (iii) any outstanding cash advances made by Integra (pursuant to Section 5 below); (iv) any Management Fee (as defined in Section 4(c) below) for any prior periods; and (v) the Management Fee for the current period. Notwithstanding any modification or termination of the Lease, Open Arms shall make, or cause to be made, the payments specified above to Integra in an order of priority at least as favorable to Integra as that order required by the Lease prior to any modification or termination of the Lease subsequent to the date hereof. If the Revenues (as defined in the Lease) shall be insufficient to pay all of the amounts described in clauses (i) through (iv) of this paragraph, then such amounts shall be paid from and out of any other available funds in accordance with and subject to the limitations as set forth in the Lease.

(b) The Costs of Operation shall consist of (i) all costs and expenses properly incurred in the operation and management of the Facility and day services programs in accordance with the provisions of this Agreement, including matters referred to herein as Integra's responsibility, including but not limited to any salary, compensation, expense reimbursement or payments to, or benefits for, employees of Open Arms or Integra who work at the Facility (including Market Area Directors formerly employed by Open Arms and now employed by Integra) and the costs of repairs to, and maintenance of, the Facility (but not the cost of Capital Expenditures), (ii) all premiums or charges for insurance coverage as described herein with respect to the operations of the Facility or the employees described above, (iii) direct expenses and costs incurred in connection with the purchase of necessary supplies for the Facility, the furnishing of utilities to the Facility and other necessary services furnished by independent contractors for the Facility, (iv) any audit adjustments or payments required in connection with or as a consequence of any proceeding or appeal related to reports or the returns described in Sections 2(h)(iv) and or matters arising out of issues addressed in Section 2(k) hereof; (v) any ad valorem taxes payable with respect to the Facility and (vi) reasonable costs or expenses properly incurred by Integra on behalf of Open Arms, including costs incurred due to any change in the rules and regulations of any governmental authority with jurisdiction over the Facility which costs are required to be incurred to maintain the licenses, certifications, provider agreements and applicable accreditations for the Facility (the "Costs of Operation"). Prior written approval by Open Arms is required for each reimbursement. If it is reasonably deemed necessary by Integra for Integra to provide or arrange for direct care, supervisory support or consulting services on a temporary basis to the Facility, unless otherwise provided for herein, the reasonable expenses for providing these services will be charged to Open Arms and included in the Cost of Operations.

Such expenses will include items such as employee or subcontractor wages, federal and state income taxes, benefits, travel and other direct charges, all of which shall be reasonable. If the temporarily assigned employee undertakes a work assignment for Open Arms that encompasses the period after a holiday and works at the Facility the day prior to the holiday but not on the holiday, the compensation paid to the employee for that holiday will be charged to the Facility. Vacation expenses for the temporarily assigned employee will be included as a part of the benefit cost on a prorated basis.

(c) (i) The Management Fee shall be paid to Integra in accordance with the terms of this Section 4(c) (the "Management Fee").

(ii) Subject to adjustment as provided in this paragraph, the Management Fee payable to Integra shall be \$60,360.00 per year. The Management Fee shall be increased annually during the term hereof by a percentage proportionate to any adjustment for inflation or cost of living applied by the Tennessee TennCare/Medicaid program (or successor program) with respect to costs utilized for purposes of determining applicable TennCare/Medicaid rates for such year, to be effective at the time of the adjustment in the TennCare/Medicaid rates received by Open Arms. In the event the Facility, or any replacement facility, shall no longer be operated under this Agreement, the Management Fee payable under this Agreement shall no longer accrue, commencing with the date following the cessation of such operation. Notwithstanding anything to the contrary contained herein, if an event of default has occurred pursuant to the Lease due to a the failure of Integra to comply with the requirements of this Agreement, and such Lease default has not been cured within sixty (60) days after the occurrence thereof, the Management Fee shall continue to accrue but payment thereof shall be suspended until such Lease default has been cured.

(iii) The Management Fee shall accrue beginning with the date of this Agreement, and each month's fee as accrued shall be (a) submitted for payment by Open Arms to the agent under any "Deposit Account Control Agreement" (or similar agreement) established pursuant to the Lease within ten (10) days after Open Arms' receipt of Integra's invoice therefor; and (b) paid in accordance with the terms of such Deposit Account Control Agreement or similar agreement.

(d) To the extent amounts available for such purpose under the "Deposit Account Control Agreement" (or similar agreement) established pursuant to the Lease in any month are not sufficient to pay the Management Fee or other amounts owed to Integra ("Other Amounts"), after giving effect for the last sentence of Section 4(a) hereof, any unpaid Management Fee and Other Amounts shall accumulate interest at a simple interest rate equal to one percent (1%) per annum commencing as of the payment due

date(s) of the Management Fee and Other Amounts, and such past due Management Fee and Other Amounts plus accumulated interest thereon shall be paid promptly when revenues are sufficient to do so or other funds become available to Open Arms with which to make such payments. Such rate payable as determined in the preceding sentence shall be hereinafter referred to as the "Advance Rate."

(e) This Agreement is subject to that certain Subordination Of Management Agreements of even date herewith by and among Open Arms, Integra and Landlord (the "Subordination"), pursuant to which all Management Fees have been subordinated to the Lease and all payments of rent due thereunder, and all other amounts from time to time payable by Open Arms to Landlord, except as otherwise allowed pursuant to the Subordination.

5. **Capital Improvements and Working Capital.** To the extent not prohibited by law or the Lease, Open Arms shall have the obligation of advancing funds for all capital expenditures required by the rules and regulations of any governmental authority, and required to maintain the licenses, certifications, provider agreements and applicable accreditations for the Facility. Subject to Open Arms' prior written consent, which shall not be unreasonably withheld, and subject to Integra's compliance with its contractual obligations to Open Arms hereunder and otherwise, Open Arms shall be obligated to advance funds, or require the Landlord to advance funds, for such capital expenditures required for the efficient operation of the Facility and to maintain the Facility in good condition, commensurate with the standards and quality of other similar facilities.

Integra is hereby authorized to incur expenses and liabilities in the ordinary course of rendering the services described herein in accordance with the Budget and to purchase individual capital assets necessary for each Facility but which are not set forth in the Budget which do not have an individual cost in excess of Five Thousand Dollars (\$5,000) and a calendar year aggregate cost in excess of Fifty Thousand Dollars (\$50,000), subject to the total amount approved in the annual expense budget for Cost of Operations. The determination of whether an expenditure constitutes a Capital Expenditure shall be made pursuant to Section 2(iii) and in accordance with generally accepted accounting principles.

Subject to Integra's compliance with its contractual obligations to Open Arms hereunder and otherwise, Open Arms shall be obligated to provide all capital required to pay timely all Costs of Operation, the Management Fee, Capital Expenditures, and all obligations of Open Arms hereunder. Integra shall not be obligated to provide any working capital for the operation of the Facility, except that Integra shall be required to furnish working capital required to perform its obligations hereunder that are not to be underwritten by Open Arms.

6. **Term.** This Agreement shall commence at 12:01 a.m. on the day following the Certification Date (as defined in the Lease) (the "Commencement Date") and unless earlier terminated in accordance with Section 7 hereof, shall expire seven (7) years after the Commencement Date (the "Original Term"); provided, however, that this Agreement shall automatically renew for one (1) successive additional seven (7) year period unless notice is given in writing by either party to the other at least one hundred eighty (180) days prior to the expiration of the Original Term (the "Initial Extension Term"). Additionally, this Agreement

shall automatically renew for successive one (1) year periods after the end of the Initial Extension Term, unless notice is given in writing by either party to the other at least one hundred eighty (180) days prior to the expiration of the Initial Extension Term or any successive one (1) year period pursuant to the automatic renewal provisions or any agreed extensions. Except as otherwise set forth herein, the term of this Agreement shall not end on less than one hundred eighty (180) days prior notice to allow Open Arms or a successor manager of the Facility ample time to transition operations and continue care and services so as not to harm the residents of the Facility.

**7. Default, Right to Cure and Termination.**

(a) Each of the following shall be deemed to be an “Event of Default” hereunder:

- (i) If Integra fails to maintain and operate the Facility according to the standards established or imposed hereunder or by any applicable laws or regulations or governmental agencies having jurisdiction or authority over the Facility, other than solely by reason of the failure of Open Arms (unless the failure of Open Arms is due to any acts or omissions of Integra) to comply with its obligations thereunder or hereunder.
- (ii) If the certificates and authorizations for the Facility to participate under the TennCare/Medicaid program (or successor program) are suspended, canceled or revoked because either party has failed to perform its obligations hereunder and such party is not, in good faith, diligently pursuing the reinstatement of such certificates and authorizations as set forth in paragraph (b) of this Section 7.
- (iii) If either party is or becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files a voluntary petition under the provisions of the United States Bankruptcy Code, including without limitation, a petition for reorganization or arrangement or consents to an involuntary petition or is adjudicated a bankrupt.
- (iv) If either party violates, or is in breach of, any material term or condition of this Agreement. For purposes of this paragraph (iv), without limitation, (y) the failure of either Integra or Open Arms to operate the Facility in accordance with the provisions of the Budgets submitted to and approved by Open Arms or (z) the non-payment of any Management Fee or Other Amounts (as defined in Section 4(d) for a period of sixty (60) days, shall be considered a breach of a material term of this Agreement

(b) Upon the occurrence of an Event of Default, the party not responsible for the Event of Default (the “Non-Defaulting Party”) may declare this Agreement

terminated; provided, however, that with respect to subsections 7(a)(i) - 7(a)(iv), this Agreement may be terminated by the Non-Defaulting Party only in the event the other party (the "Defaulting Party") fails to cure the Event of Default within thirty (30) days after written notice from the Non-Defaulting Party, which notice shall specify in sufficient detail all material information known by the Non-Defaulting Party concerning the specific circumstances of the Event of Default so as to give the Defaulting Party adequate notice and the opportunity to cure same; provided further the Non-Defaulting Party shall not have the right to terminate this Agreement if at the end of such thirty (30) day period, cure of the Event of Default is reasonably foreseeable, the Defaulting Party has taken reasonable steps to cure the Event of Default within said period, and the Defaulting Party proceeds diligently thereafter to cure the Event of Default. Notwithstanding anything to the contrary contained herein, upon an event of default under the Lease, which default continues after the giving of any required notices and the expiration of any cure periods provided for in the Lease and which has not been waived or cured as provided in the Lease, Open Arms shall have the right to terminate this Agreement upon written notice given to Integra.

- (c) (i) Upon termination of this Agreement for any reason other than (A) by reason of Integra being responsible for an Event of Default, or (B) Integra's election not to extend this Agreement at the end of the original term or any renewal term, any outstanding accrued Management Fee, Other Amounts, and advances by Integra to Open Arms pursuant to Section 5 hereof (collectively, "Open Arms Obligations") shall become immediately due and payable.
- (ii) Subject to the terms and conditions of the Lease, upon termination of this Agreement by reason of Integra's election not to extend this Agreement at the end of the original term or any renewal term, any Open Arms Obligations shall be payable by Open Arms to Integra in twelve (12) equal monthly installments, commencing thirty (30) days after the effective date of such termination, together with simple interest accruing from such effective date at the Advance Rate, payable monthly in arrears.
- (iii) Notwithstanding any other provision to the contrary contained in this Section 7(c), any payments to Integra upon termination of this Agreement for any reason shall be made only in accordance with and as limited by the restrictions set forth in the Lease.

8. **Insurance.** On behalf of, and at the expense of Open Arms, Integra shall use its best efforts to procure and maintain in full force and effect on a cost-effective basis all insurance coverage required by the Lease, or by any lender to the Landlord, or by any governmental authority with jurisdiction over the Facility, to the extent such insurance coverage requirements are stricter than any specific insurance requirements contained herein. Integra shall provide Open Arms with written evidence of such coverage at the time of inception of coverage, on an annual basis thereafter, and at any other time as requested by Open Arms, which insurance may be provided on a multi-facility basis with other facilities operated by Open Arms.

All such insurance to the extent appropriate will name Integra, Open Arms, and to the extent required by the Lease, the Landlord and any lender to the Landlord, as co-insured parties or additional insured parties. The premiums for all insurance coverage which directly insures the risks of the Facility shall be paid by Open Arms as part of the Costs of Operation. Open Arms and Integra hereby each waive any right of recovery against the other party for any claims that may be brought for any loss which is covered by fire and extended coverage insurance upon or relating to the Facility and the furnishings and equipment thereon to the extent such claims are paid by said coverage. This waiver of subrogation shall be valid and binding only in the event it is recognized and accepted by the fire and hazard insurance companies under policies obtained hereunder.

(a) Integra shall use its best efforts to (i) secure certificates of insurance for Open Arms, (ii) maintain the original of such policies at the office of Integra, (iii) deliver duplicate copies of the policies to Open Arms and the Landlord, and (iv) procure endorsements thereto prohibiting any termination or cancellation thereof until the expiration of thirty (30) days' after written notice of cancellation to all named insureds.

(b) In addition, Integra shall procure and maintain in full force and effect during the term hereof, to cover acts and omissions during the term of its services hereunder (i) \$1,000,000 each occurrence/\$1,000,000 aggregate general and professional liability insurance coverage, (ii) \$1,000,000 each occurrence/\$1,000,000 aggregate bodily injury and property damage insurance, as supplemented by general liability coverage under a \$5,000,000 umbrella policy and (iii) workers' compensation insurance coverage with limits not less than those limits carried by Open Arms respect to the Facility during the one year period prior to the date hereof, in order to insure itself against normal business risks inherent in its operation and management of the Facility and shall, to the extent possible without increases in premiums unless said increases are paid by Open Arms after Integra gives reasonable notice to Open Arms thereof, cause Open Arms to be named as an additional insured thereunder, to the extent its interests appear, on the policies evidencing such insurance. As reasonably requested by Open Arms from time to time, Integra shall provide Open Arms with written evidence that such insurance coverage remains in full force and effect.

(c) In addition, Integra shall procure and maintain in full force and effect fidelity insurance coverage on a loss discovered basis (including crime, employee dishonesty, including third party coverage) to insure against damages resulting from such acts or omissions by Integra or any of its contractors or agents which take place during the term of this Agreement. All such insurance coverage shall have a limit of not less than \$1,000,000, with a deductible of not more than \$10,000, shall name Open Arms as an additional named insured, and shall contractually require the carrier to inform Open Arms immediately in the event of any pending lapse in coverage for any reason. Simultaneously with the execution of this Agreement, Integra shall furnish Open Arms with a Certificate from said carrier evidencing the effectiveness of such insurance coverage.

9. **Use of Premises.** Integra shall not, without the prior written consent of Open Arms, at any time use the Facility or any portion thereof, or permit the Facility or any portion

thereof to be used for purposes other than an ICF/IID facility in compliance with all applicable rules and regulations of the United States and the State of Tennessee.

10. **Right to Inspect.** At any time during regular business hours, and at any time outside regular business hours if prior telephonic notice during regular business hours is given to the designated official of Integra having on-site management responsibility for the Facility, Open Arms or its representatives shall have the right to inspect the financial and other records in the actual or constructive control of Integra (and to make copies of documents as appropriate and at their expense) related to the Facility, including but not limited to books, records, data files and reports (electronic or otherwise) prepared by Integra or any other person or entity by or on behalf of Integra and maintained by Integra or such other person or entity at or in connection with the Facility with respect to in the performance of its services hereunder and the condition of the Facility.

11. **Books and Records.** All books, records, data files and reports prepared by Integra for or in connection with the management of the Facility and maintained by Integra at the Facility or at any location other than the Facility shall be available for inspection and copying by Open Arms or its representatives or the Landlord at their own expense and during normal business hours with prior written notice to Integra. It is agreed and understood that computer software and the users manuals for such software developed or acquired by Integra or used by Integra employees in connection with the management of the Facility shall not be considered "books, records, data files and reports" as those terms are used in this Section 11, provided that printouts of data generated by use of such software shall be considered such "books, records, data files and reports". Furthermore, it is agreed by the parties hereto that any computer software and the user manuals for such software developed by Open Arms employees shall remain the property of Open Arms.

12. **Cooperation at Termination.** Upon the expiration or earlier termination of term of Integra's management of the Facility hereunder, each of the parties hereto shall cooperate fully with the other in effecting an orderly transition to avoid any interruption in the rendering of the above-described services and, in that connection, Integra shall promptly surrender to Open Arms all keys, contracts, books, records, data files and reports (as such terms are defined in Section 11 hereof) maintained by Integra in connection with the management of the Facility. Furthermore, the parties hereby agree that any information received by a party or its attorneys, accountants or agents about the other party in the performance of such party's obligations hereunder, which concerns the financial or other affairs of such party, will be treated in full confidence and will not be revealed to any other persons, firms or organization.

13. **Covenant Not to Employ Personnel.** The parties acknowledge that Integra, in the performance of its obligations hereunder, utilizes certain of its employees. Open Arms recognizes that Integra has incurred and will incur considerable time and expense in developing Integra employees. For this reason, Open Arms covenants with Integra that Open Arms shall not, at any time during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, directly or indirectly solicit the employment of any person who is at that time an Integra employee or encourage any successor to Integra's duties hereunder to solicit the employment of any such person who is at that time an Integra employee for services to be rendered at or in connection with the Facility or at any other facility offering services to

persons with developmental disabilities owned or operated by Open Arms unless this covenant has been waived in writing by Integra. It is understood and agreed, however, that this covenant shall not apply to persons who were employees of Open Arms as of September 30, 2014 and were subsequently employed by Integra.

Recognizing that Integra would not have an adequate remedy at law in the event of any breach of this covenant, Open Arms agrees that the covenants set forth herein may be enforced by Integra by an appropriate restraining order or other injunctive relief.

Furthermore, Integra recognizes that Open Arms has incurred and will incur considerable time and expense in developing Open Arms employees. For this reason, Integra covenants with Open Arms that Integra shall not, at any time during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, directly or indirectly solicit the employment of any person who is at that time an employee of Open Arms, except with the prior written consent of Open Arms, not to be unreasonably withheld. In furtherance of the foregoing, it is anticipated that employees working in certain positions within Open Arms may from time-to-time have limited opportunities for advancement within Open Arms, and as such employees reach the limits of advancement opportunities at Open Arms, it may be reasonable for Integra to request the consent of Open Arms for the employment by Integra by such an individual who is advancing in his/her career path and has reached the limits of advancement within Open Arms.

Recognizing that Open Arms would not have an adequate remedy at law in the event of any breach of this covenant, Integra agrees that the covenant set forth herein may be enforced by Open Arms by an appropriate restraining order or other injunctive relief.

14. **Indemnification.** Any Defaulting Party shall release and indemnify and hold the Non-Defaulting Party and the Non-Defaulting Party's shareholders, directors, officers and employees and agents harmless from and against any and all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees) incurred and arising out of or resulting from an Event of Default by the Defaulting Party and Integra shall release and indemnify and hold Open Arms and its shareholders, directors, officers, employees and agents harmless from and against any and all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees) incurred and arising out of or resulting from actions taken by Integra outside the scope of the authority specifically granted to Integra herein. Furthermore, Open Arms shall indemnify Integra with regard to any and all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees) with regard to any action, suit or proceeding brought by a person or entity that managed the Facility prior to the date hereof; provided, however, that such indemnification by Open Arms shall extend only to such amounts as may be reimbursable costs under the TennCare/Medicaid system.

15. **Litigation or Proceedings on Behalf of Open Arms.** If any claim or cause of action of Open Arms arises during the term of this Agreement, or if any third party claim, action, or other legal or administrative proceeding arising from or related to the management of the Facility is filed against Open Arms, upon receiving notice of any such claim, cause of action or proceeding, the party receiving such notice shall promptly give notice thereof to the other party, and Integra shall have the option, exercisable in its reasonable discretion, by giving written notice thereof to Open Arms, to institute or defend such claim, action or other legal or



administrative proceeding in Integra's name or Open Arms' name, as their respective interests may appear to be claimed, provided that Integra uses good faith best efforts to proceed in such action in a manner that is in Open Arms' best interests. The reasonable costs and expenses of prosecuting and defending any such claim, action, or legal or administrative proceeding shall be reimbursed to Integra by Open Arms as Costs of Operation, except as they relate to Events of Default by Integra or the independent acts of Integra taken outside the scope of the performance of its duties hereunder or the negligence, willful misconduct or breach by Integra of its obligations hereunder, which costs and expenses shall be borne exclusively by Integra notwithstanding any other provision to the contrary herein contained. Open Arms agrees to provide reasonable assistance to Integra in the prosecution and defense of any such action upon request by Integra and upon Integra's agreement to pay all of Open Arms' expenses related thereto, except for expenses for which Open Arms is otherwise obligated hereunder. Open Arms further agrees that Integra shall have the right to recommend legal counsel for Open Arms' approval to represent the interests of Open Arms in any such claim, action or legal or administrative proceeding. Integra shall provide Open Arms with timely and periodic written reports regarding the progress of each such claim, action or proceeding. If Integra decides, in its reasonable discretion, not to institute or defend such claim, action or other legal or administrative proceeding, Integra shall notify Open Arms in writing promptly of its decision, providing Open Arms, sufficient time to take appropriate action, and in such event, Open Arms shall be fully responsible for the prosecution or defense of each such claim, action, and legal and administrative proceeding, including then prospective costs and attorneys' fees, except when the claim, action or proceeding relates to Events of Default by Integra, or the independent acts of Integra taken outside the scope of the performance of its duties hereunder, or the negligence, willful misconduct or breach by Integra of its obligations hereunder, except that Integra agrees to provide reasonable assistance to Open Arms with respect to such matters upon request by Open Arms.

**16. Compliance with Public Law 96-499.**

(a) Pursuant to regulations promulgated by the Federal Health Care Financing Administration, an agency of the Department of Health and Human Services, implementing Section 952 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) or any subsequent legislation conditioning reimbursement on the cost of services performed, insofar as this Agreement covers services valued at or costing \$10,000 or more over a twelve (12) month period, the parties agree to provide the Secretary of Health and Human Resources, upon written request, or the Comptroller General, or their duly authorized representatives, access to this Agreement and the parties' books, documents and records necessary to verify the nature and extent of the cost of the services provided by the parties. Such access shall be provided until the expiration of four (4) years after the services are furnished under this Agreement.

(b) If Integra carries out any duties of this Agreement through a subcontract with an aggregate value or cost of \$10,000 or more over a twelve month period with an Affiliate, Integra shall require in writing that the Affiliate shall make available, upon written request, to the Secretary of Health and Human Resources, or the Comptroller General, or their duly authorized representatives, the said subcontract and the books, documents and records of the Affiliate that are necessary to verify the nature and extent

of the costs of the services provided under the said subcontract. The subcontract shall require that such access shall be provided until the expiration of four (4) years after the services are furnished under the contract.

17. **Amendment or Termination as a Result of Governmental Regulation.** The parties acknowledge and agree that this Agreement is intended to comply with all state and federal laws and regulations regarding Medicare and Medicaid fraud and abuse, Open Arms' status as a recipient of governmental or private funds for the provision of health care services, or Open Arms' status as an organization described in Section 501(c)(3) of the Code. Open Arms shall have the right to terminate or amend this Agreement, if on the advice of its counsel it determines, in its reasonable judgment, that the terms of this Agreement more likely than not would be interpreted to violate any laws or regulations applicable to it, which, if violated, would jeopardize Open Arms' status as a recipient of governmental or private funds for the provision of health care services, or Open Arms' status as an organization described in Section 501(c)(3) of the Code. Notwithstanding such right to terminate, Open Arms shall first use reasonable efforts to amend this Agreement only to the extent necessary to conform the potentially violative terms to the applicable law or regulation, and will only terminate this Agreement pursuant to this Section if it determines, in its reasonable judgment, that an amendment cannot be obtained or will not result in compliance.

18. **Parties Bound.** The provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns. Except as specifically provided herein, neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party. No assignment of rights or delegation of duties shall relieve either party, as the case may be, of its obligations hereunder. Notwithstanding the foregoing, however, in respect to transfers after an event of default under the Lease, any person claiming through the deed of trust trustee or a transferee under a deed in lieu of foreclosure (the foregoing collectively referred to as the "Transferee"), the Transferee shall, at its option and without further action by Open Arms, succeed to Open Arms' rights hereunder, with or without the assumption of the obligations of Open Arms hereunder, which assumption shall be at the sole discretion of such Transferee, but in no event shall any of the foregoing be deemed a release of any of the obligations of Open Arms hereunder.

19. **Severability.** In the event any provision hereof shall be modified or held ineffective by any court in any respect, such adjudication shall not invalidate or render ineffective the balance of the provisions of this Agreement.

20. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and completely supersedes any prior oral or written agreements between the parties. Any other agreements with respect to the subject matter hereof between the parties, whether written or oral, are merged herein. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed, or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

21. **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been given (i) on the date of delivery by courier or personally, (ii) three (3) business days after deposit in the United States mail, postage prepaid by registered or certified mail, return-receipt requested to the appropriate party at the following addresses.(or at such other address as shall hereafter be designated by any party to the other party by notice given in accordance with this Section):

To Open Arms:

Open Arms Care Corporation  
6 Cadillac Drive, Suite 350  
Brentwood, TN 37027

With a copy to:

Thomas V. Chorey, Jr.  
Barnes & Thornburg LLP  
3475 Piedmont Rd., NE, Suite 1700  
Atlanta, GA 30305-3327  
Fax: 800-753-5139  
Phone: 404-846-1693  
Email: tchorey@btlaw.com

To Integra:

Integra Resources, LLC  
144 Second Avenue, North, Suite 300  
Nashville, TN 37201

With a copy to:

Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Attention: Michael D. Brent, Esq.  
Fax: 615-252-6361  
Phone: 615-252-2361  
Email: mbrent@babco.com

22. **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

23. **Further Assurances.** The parties each hereby agree to execute and deliver all of the agreements, documents, and instruments required to be executed and delivered by them in

this Agreement and to execute and deliver such additional instruments and documents and to take such additional actions as may reasonably be required from time-to-time in order to effectuate the transaction contemplated by this Agreement.

24. **Exhibits.** Any Exhibits attached hereto constitute a part of this Agreement and are incorporated herein by reference in their entirety as if fully set forth in this Agreement at the point where mentioned herein.

25. **Tense, Captions.** In construing this Agreement, whenever appropriate, the singular tense shall also be deemed to mean the plural, and vice-versa, and the captions contained in this Agreement shall be ignored.

26. **Party Rights No Third.** Except as otherwise expressly provided herein or in the Lease, the provisions of this Agreement shall not entitle any person not a signatory hereto to any rights or reliance hereunder or in respect hereof, as a third party beneficiary or otherwise, it being the specific intention of the parties herein to preclude any and all such persons non-signatory hereto from such rights.

27. **Survival.** Any rights or obligations accrued under this Agreement at the expiration or termination of this Agreement shall survive such termination.

28. **Replacement Facility.** In the event a new replacement facility should be substituted for the Facility, whether on the same site or at a different location within the market area, all rights or obligations of the parties, including the remaining term, pursuant to this Agreement shall apply with respect to the new replacement Facility.

29. **Public Statements.** Unless otherwise required by law or court order, prior to the Commencement Date, neither Open Arms or Integra shall, without the prior written consent of the other party hereto, make any press release or other public announcement concerning the transactions contemplated by this Agreement. Provided, however, that Integra and Open Arms may announce the execution of this Agreement to their respective employees.

30. **Arbitration.** The parties hereto agree and stipulate that all claims, disputes and other matters in question or at issue between them arising out of or relating to this Agreement or the breach thereof, including, without limitation, any dispute or question concerning the scope of this arbitration clause, will be decided by arbitration in Nashville, Tennessee, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, subject to the limitations of this Section 30. This covenant to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. The parties hereto agree that one arbitrator shall arbitrate all disputes. Notice of a demand for arbitration shall be filed in writing by either party hereto with the other party hereto and with the American Arbitration Association. The demand for arbitration shall be made no later than the date when institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to vacation, modification or appeal, except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act, the terms of which Sections the parties hereto agree shall apply. Each of

the parties hereto submits to the jurisdiction of the state courts of Davidson County, Tennessee for purposes of the entry of any judgment arising out of the award of the arbitrator. All costs and expenses of each of the parties hereto with respect to the arbitration (including reasonable attorneys' fees) and the expenses of the arbitrators shall be paid by the party hereto against whom a determination by the arbitrator is made or, in the absence of a determination against one party hereto, as such arbitrator directs.

**31. Overriding Provisions.**

(a) Notwithstanding the execution date hereof, it is agreed and understood by the parties hereto that this Agreement shall be considered the agreement pursuant to which the "Manager," as such term is defined under the Lease, manages the Facility.

(b) Notwithstanding anything to the contrary contained herein, it is the intent of the parties hereto that this Agreement in all respects shall conform to the terms and conditions of the Lease. Accordingly, to the extent that any term or condition contained herein or hereunder shall conflict with any such terms or conditions contained in the Lease, then the provisions of the Lease shall control in all respects, and the terms of this Agreement shall be automatically deemed amended in an agreeable manner in order to bring this Agreement into compliance with the Lease.

(c) Notwithstanding anything to the contrary herein contained, it is understood and agreed that in the event of the default by either party hereto pursuant to the terms of any other ICF/IID Facilities Management Agreement, or the terms of the Global Management Agreement of even date herewith, the result of which default entitles the non-defaulting party thereunder to terminate such agreement, by giving notice thereof to the defaulting party, said non-defaulting party shall have an identical right to terminate this Agreement, just as if there had been an Event of Default hereunder by said defaulting party for which there was no cure within any applicable cure period.

(d) Further notwithstanding anything to the contrary herein contained, it is understood and agreed that in the event of a conflict between the provisions of this Agreement and the provisions of that certain Global Agreement to Provide Management Services, as amended, between the parties hereto executed simultaneously with the execution hereof (the "Global Agreement," by reference made an integral part hereof), the provisions of this Agreement shall govern and control over the provisions of the Global Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below, effective as of the Commencement Date first above written.

**OPEN ARMS CARE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**INTEGRA RESOURCES, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**FACILITY ANNUAL BUDGET**

[to be attached after finalization and approval in writing by each party hereto]

**Attachment A - 6A**

**Deed/Lease/Option to Purchase**



AY 1768

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## WARRANTY DEED

THIS INDENTURE, made and entered into on this 24th day of February, 1989, by and between Patricia Sue Humphreys Morris and husband, Ronald G. Morris; David Fleming Humphreys and wife, Connie B. Humphreys; Bettie Kathleen Humphreys Cunningham and husband, George E. Cunningham, and Doris Elizabeth Humphreys Watkins and husband, Sammy J. Watkins, party of the first part, and Joseph H. Kadogna, Trustee party of the second part.

WITNESSETH That for and in consideration of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, the receipt of all of which is hereby acknowledged, the said party of the first part has bargained and sold and does hereby bargain, sell, convey and confirm unto the said party of the second part the following described real estate, situated and being in the County of Shelby, State of Tennessee

A parcel of land located in Shelby County, Tennessee, and lying approximately 3160 feet east of the centerline of Germantown Road and along the north margin of the original Dexter Road. Said parcel being the property of Patricia C. Humphreys Morris, David Fleming Humphreys, Bettie Kathleen Humphreys Cunningham and Doris Elizabeth Humphreys Watkins, described as Instrument #AN 9558 in the Register's Office of Shelby County, Tennessee. Said parcel being more particularly described as follows:

STARTING from the point where the north margin of the original Dexter Road intersects the centerline of Germantown Road and proceeding east along said north margin 3160.64 feet to the point of beginning; thence N 01° 40' 21" W, 541.96 feet to a point; thence N 88° 19' 39" E, 321.50 feet to a point; thence S 01° 40' 21" E, 541.96 feet to a point on the north margin of the original Dexter Road; thence S 88° 19' 39" W, 321.50 feet along said north margin to the point of beginning.

The above described tract of land is described as Parcel "F" on a plat of Dexter Woods property prepared by Ralph A. Freeman, Civil Engineer, dated January 26, 1989, and contains 4,000 acres.

RONALD G. MORRIS, CONNIE B. HUMPHREYS, GEORGE E. CUNNINGHAM, and SAMMY J. WATKINS, join in this conveyance for the purpose of conveying any and all marital rights that they may have in the said property by reason of their marriages to Patricia Sue Humphreys Morris, David Fleming Humphreys, Bettie Kathleen Humphreys Cunningham, and Doris Elizabeth Humphreys Watkins.

TO HAVE AND TO HOLD The aforesaid real estate, together with all the appurtenances and hereditaments thereunto belonging or in any wise appertaining unto the said party of the second part, its heirs, successors and assigns in fee simple forever, with full power in said Trustee to sell, mortgage, lease, convey or otherwise dispose of said property and any purchaser, lessee, and/or encumbrancer being hereby expressly relieved of the necessity of looking to the application of the proceeds of \*

The said party of the first part does hereby covenant with the said party of the second part that it is lawfully seized in fee of the aforescribed real estate, that it has a good right to sell and convey the same, that the same is unencumbered, except for 1989 county taxes not yet due and payable and any part of said property lying in public roads.

\* such sale, lease, mortgage, or other disposition of said property.

and that the title and quiet possession thereto it will warrant and forever defend against the lawful claims of all persons

The word "party" as used herein shall mean "parties" if it refers to more than one person or entity, and pronouns shall be construed according to their proper gender and number according to the context hereof.

WITNESS the signature of the party of the first part the day and year first above written

Patricia Sue Humphreys Morris

David Fleming Humphreys

Ronald G. Morris

Connie B. Humphreys

Bettie Kathleen Humphreys Cunningham

George E. Cunningham

(See reverse side for additional Signatures)

AY 1768

Doris Elizabeth Humphrey Watkins  
Doris Elizabeth Humphreys Watkins

Sammy J. Watkins  
Sammy J. Watkins

## STATE OF TENNESSEE, COUNTY OF SHELBY

Personally appeared before me, a Notary Public in and for said State and County, \_\_\_\_\_

\_\_\_\_\_, the within named  
bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence),  
and who acknowledged that \_\_\_\_\_ he \_\_\_\_\_ executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public

(SEE ATTACHED ACKNOWLEDGMENTS)

My commission expires: \_\_\_\_\_

## (FOR RECORDING DATA ONLY)

Property Address 8428 Dexter Road

Mail Tax Bills to: (Person or Agency responsible for payment of taxes)

Joseph M. Radogna  
Seven Oaks International  
700 Colonial Road  
Memphis, TN 38117

This instrument prepared by:

Fred E. Jones, Attorney at Law5159 Wheelia DriveMemphis, TN 38117

State Tax ..... \$... 359.60..

Register's Fee ..... 50

Recording Fee ..... 9.00 ~~18.00~~

Total ..... \$... 379.10..

T.G. # MS297890

Return to: Fred E. Jones  
Attorney at Law  
5159 Wheelia Drive  
Memphis, TN 38117

I, or we, hereby swear or affirm that, to the best of  
affiant's knowledge, information, and belief, the  
actual consideration for this transfer or value of the  
property transferred, whichever is greater, is

\$ 112,000.00  
which amount is equal to or greater than the  
amount which the property would command at a  
fair and voluntary sale.

Joseph M. Radogna, Trustee  
Affiant

Subscribed and sworn to before me this 2nd  
day of March, 19 89

Notary Public

My commission expires: 1/22/1992

COMPLIMENTS OF MID-SOUTH TITLE INSURANCE CORPORATION



AY 1768

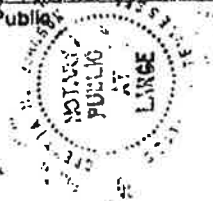
## STATE OF TENNESSEE, COUNTY OF DAVIDSON

Personally appeared before me, a Notary Public in and for said State and County, David Fleming

Humphreys and wife, Connie B. Humphreys, the within named  
 bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence),  
 and who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 1 day of March 89

Bethia M. Johnson  
 Notary Public

My commission expires 5/20/92

## STATE OF TENNESSEE, COUNTY OF DAVIDSON

Personally appeared before me, a Notary Public in and for said State and County, Patricia Sue

Humphreys Morris and husband, Ronald G. Morris, the within named  
 bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence),  
 and who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 1 day of March 89

Bethia M. Johnson  
 Notary Public

My commission expires 5/20/92

## STATE OF TENNESSEE, COUNTY OF WEAKLEY

Personally appeared before me, a Notary Public in and for said State and County, Bettie Kathleen

Humphreys Cunningham and husband, George E. Cunningham, the within named  
 bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence),  
 and who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 28 day of February, 1989

Mary Robertson  
 Notary Public

AY 1768	
No.	36966
STATE TAX	8.00
RECORDING FEE	9.00
TOTAL	17.00
STATE OF TENNESSEE	
SHELBY COUNTY	
CITY OF BAYES	

1-23-91

AY1768

REGISTER & CLERK  
 135 HAR - 3 - 12 - 89

## STATE OF TENNESSEE, COUNTY OF WARDEMAN

Personally appeared before me, a Notary Public in and for said State and County, Belle Elizabeth

Humphreys Watkins and husband, Sammy J. Watkins, the within named  
 bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence),  
 and who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 2nd day of March, 1989

Barbara Vaughan  
 Notary Public

My commission expires 10-24-89

AY 1766

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## WARRANTY DEED

THIS INDENTURE, made and entered into on this 24th day of February, 1989,  
by and between JAMES E. HUMPHREYS, JR. and wife, DORIS F. HUMPHREYS, and BETTIE H. MINION  
and husband, JEROME A. MINION,

party of the first part, and JOSEPH M. RADOGNA, Trustee,

party of the second part.

WITNESSETH That for and in consideration of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, the receipt of all of which is hereby acknowledged, the said party of the first part has bargained and sold and does hereby bargain, sell, convey and confirm unto the said party of the second part the following described real estate, situated and being in the County of Shelby,  
State of Tennessee:

**PARCEL I:** A parcel of land located in Shelby County, Tennessee, lying approximately 2389 feet east of the centerline of Germantown Road and along the north margin of the original Dexter Road. Said parcel being a part of the Humphreys-Minion property as described in Book 1583, Page 309, Register's Office, Shelby County, Tennessee. Said parcel being more particularly described as follows: STARTING from the point where the north margin of where the original Dexter Road intersects the centerline of Germantown Road and proceeding east along said north margin 2389.14 feet to the Point of beginning; thence N 00° 46' 52" W, 599.03 feet to a point; thence N 88° 19' 39" E, 305.50 feet to a point; thence N 88° 19' 39" E, 135.18 feet to a point; thence S 01° 40' 21" E, 598.96 feet to a point on the north margin of the original Dexter Road; thence S 88° 19' 39" W, 450.00 feet along the north margin of said original Dexter Road to the point of beginning. The above described tract of land is described as Parcel "B" on a plat of Dexter Woods Property prepared by Ralph A. Freeman, Civil Engineer, dated January 26, 1989, and contains 6.124+ acres.

**PARCEL II:** A parcel of land located in Shelby County, Tennessee, and lying approximately 3482 feet east of the centerline of Germantown Road and along the north margin of the original Dexter Road. Said parcel being a part of the Humphreys-Minion property as described in Book 1583, page 309, Register's Office, Shelby County, Tennessee. Said parcel being more particularly described as follows: STARTING from the point where the north margin of the original Dexter Road intersects the centerline of Germantown Road and proceeding along said north margin 3482.14 feet to the point of beginning; thence N 01° 40' 21" W, 598.96 feet to a point; thence N 89° 28' 48" E, 380.00 feet to a point; said point being on the centerline of the proposed connector road between the original and the proposed new Dexter Road; thence S 00° 31' 12" E, 598.84 feet along the said centerline to a point on the north margin of the original Dexter Road; thence S 89° 28' 48" W, 368.10 feet along said north margin to the point of beginning. The above described tract of land is described as Parcel "G" on a plat of Dexter Woods Property prepared by Ralph A. Freeman, Civil Engineer, dated January 26, 1989, and contains 5.141 + acres.

Doris F. Humphreys and Jerome A. Minion, the spouses of James E. Humphreys, Jr. and Bettie H. Minion respectively, join in this conveyance for the purpose of conveying any and all marital rights that they may have in said property by reason of their marriages to James E. Humphreys, Jr. and Bettie H. Minion, owners of the within described property.

TO HAVE AND TO HOLD The aforesaid real estate, together with all the appurtenances and hereditaments thereunto belonging or in any wise appertaining unto the said party of the second part, its heirs, successors and assigns in fee simple forever, with full power in said Trustee to sell, mortgage, lease, convey or otherwise dispose of said property and any purchaser, lessee, and/or encumbrancer being hereby expressly relieved of the necessity of looking to the application of the proceeds of such sale,\*

The said party of the first part does hereby covenant with the said party of the second part that it is lawfully seized in fee of the aforescribed real estate, that it has a good right to sell and convey the same, that the same is unencumbered, except for 1989 county taxes not yet due and payable and any part of said property lying in public roads and easement recorded as Instrument Y4 0710 in the Register's Office of Shelby County, Tennessee.

\* lease, mortgage, or other disposition of said property.

and that the title and quiet possession thereto it will warrant and forever defend against the lawful claims of all persons

The word "party" as used herein shall mean "parties" if it refers to more than one person or entity, and pronouns shall be construed according to their proper gender and number according to the context hereof

WITNESS the signature of the party of the first part the day and year first above written

Bettie H. Minion  
Bettie H. Minion

Jerome A. Minion  
Jerome A. Minion

James E. Humphreys, Jr.  
James E. Humphreys, Jr.

Doris F. Humphreys  
Doris F. Humphreys

AY 1766

## STATE OF TENNESSEE, COUNTY OF SHELBY

Personally appeared before me, a Notary Public in and for said State and County, James E. Humphreys, Jr. & wife, Doris F. Humphreys, and Bettie H. Minion and husband, Jerome A. Minion, the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that they executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 24th day of February, 1989

Fred E. Jones  
Notary Public

My commission expires: 1/22/1992

(FOR RECORDING DATA ONLY)

Property Address Vacant

Mail Tax Bills to: (Person or Agency responsible for payment of taxes)

Joseph M. Kadogno

Seven Oaks International  
700 Colonial Road  
Memphis, TN 38117

This instrument prepared by:

Fred E. Jones, Attorney

5159 Wheelis Drive

Memphis, TN 38117

State Tax ..... \$ 1,040.89.

Register's Fee ..... .50

Recording Fee ..... 6.00

Total ..... \$ 1,047.39.

T.G. # HS297890

Return to Fred E. Jones  
5159 Wheelis Drive  
Memphis, TN 38117

I, or we, hereby swear or affirm that, to the best of affiant's knowledge, information, and belief, the actual consideration for this transfer or value of the property transferred, whichever is greater, is

\$ 315,420.00

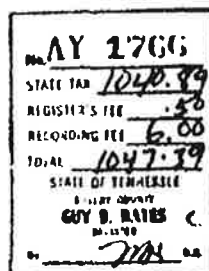
which amount is equal to or greater than the amount which the property would command at a fair and voluntary sale.

Joseph M. Kadogno, Trustee  
Affiant

Subscribed and sworn to before me this 24th day of February, 19 89

Fred E. Jones  
Notary Public

My commission expires: 1/22/1992



COMPLIMENTS OF MID-SOUTH TITLE INSURANCE CORPORATION



AY 1766

SHR 011 10003  
REGISTRATION  
ESD M2 - 0 - 10 56



## LOT/LAND PURCHASE AND SALE AGREEMENT

1. **Purchase and Sale.** For and in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned buyer

Facility Development Group or Assigns ("Buyer") agrees to buy and

the undersigned seller Mary S. Shelton, Rita Ann Thompson, Joseph Radogaj ("Seller")

agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as follows:

All that tract of land known as: Dexter Road 38016

(Address) Memphis (City), Tennessee, 38106 (Zip), as

recorded in Shelby County Register of Deeds Office,

deed book(s), \_\_\_\_\_ page(s), \_\_\_\_\_ and/or instrument number and as further described as:

**Parcel ID 096507 00307C MLS#9994709**

together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the "Property."

☒ **This box must be checked to be part of this Agreement.** The full and legal description of said Property is as described in the attached "Legal Description Exhibit."

**A. LEASED ITEMS.** Leased items that remain with the Property (e.g. billboards, irrigation systems, fuel tank, etc.) Buyer shall assume any and all lease payments as of Closing. If leases are not assumable, the balance shall be paid in full by Seller at or before Closing.

☐ Buyer does not wish to assume a leased item. **(THIS BOX MUST BE CHECKED IN ORDER FOR IT TO BE A PART OF THIS AGREEMENT.)**

Buyer does not wish to assume Seller's current lease of \_\_\_\_\_; therefore, Seller shall have said lease cancelled and leased items removed from Property prior to Closing.

**B. FUEL.** Fuel, if any, will be adjusted and charged to Buyer and credited to Seller at Closing at current market prices.

2. **Purchase Price, Method of Payment and Closing Expenses.** Buyer warrants that, except as may be otherwise provided herein, Buyer will at Closing have sufficient cash to complete the purchase of the Property under the terms of this Lot/Land Purchase and Sale Agreement (hereinafter "Purchase and Sale Agreement" or "Agreement"). The purchase price to be paid is: \$ 225,000.00

Two Hundred Twenty-Five Thousand U.S. Dollars,

("Purchase Price") which shall be disbursed to Seller or Seller's Closing Agency by one of the following methods:

- i. a Federal Reserve Bank wire transfer;
- ii. a Cashier's Check issued by a financial institution as defined in 12 CFR § 229.2(i); OR
- iii. other such form as is approved in writing by Seller.

This price is based (Select one. The sections not checked are not a part of this Agreement.):

☒ for entire Property as a tract, and not by the acre OR

☐ per acre with the Purchase Price to be determined by the actual amount of acreage of the Property, \$ \_\_\_\_\_ per acre based on a current or mutually acceptable survey OR

☐ for entire Property as a tract but with the Purchase Price to be adjusted upward or downward at \$ \_\_\_\_\_ per acre in the event the actual amount of acreage of the Property based on a current or mutually acceptable survey should vary more or less than \_\_\_\_\_ acre(s) from the \_\_\_\_\_ estimated acreage.

**A. Appraisal (Select either 1 or 2 below. The sections not checked are not a part of this Agreement).**

☒ 1. This Agreement **IS NOT** contingent upon the appraised value either equaling or exceeding the agreed upon Purchase Price.

☐ 2. This Agreement **IS CONTINGENT** upon the appraised value either equaling or exceeding the agreed upon Purchase Price. If the appraised value is equal to or exceeds Purchase Price, this contingency is satisfied. In consideration of Buyer having conducted an appraisal, the sufficiency of such consideration being hereby acknowledged, if the appraised value of the Property does not equal or exceed the Purchase Price, Buyer shall promptly notify the Seller via the notification form or written equivalent notice. Buyer shall then have 3 days to either:

1. waive the appraisal contingency via the notification form or equivalent written notice  
**OR**

2. terminate the agreement by giving notice to seller via the notification form or equivalent written notice. Upon timely termination, Buyer is entitled to a refund of the Earnest money.

In the event Buyer fails to either waive the appraisal or terminate the agreement as set forth above, this contingency is deemed satisfied. Thereafter, failure to appraise shall not be used as the basis for loan denial or termination of contract. Seller shall have the right to request any supporting documentation showing appraised value did not equal or exceed the agreed upon purchase price.

Upon timely termination, Buyer is entitled to a refund of the Earnest Money/Trust Money.

**B. Closing Costs and Discount Points.**

1. **Seller Expenses.** Seller shall pay all existing loans affecting the Property, including all penalties, release preparation costs, and applicable recording costs; any accrued and/or outstanding association dues or fees; fee (if any) to obtain lien payoff/estoppel letters/statement of accounts from any and all associations, property management companies, mortgage holders or other liens affecting the Property; Seller's Closing fee, document preparation fee and/or attorney's fees; fee for preparation of deed; notary fee on deed; and financial institution (Bank, Credit Union, etc.) wire transfer fee or commercial courier service fee related to the disbursement of any lien payoff(s). Seller additionally agrees to permit any withholdings and/or to pay any additional sum due as is required under the Foreign Investment in Real Property Tax Act. Failure to do so will constitute a default by Seller.

In the event Seller is subject to Tax Withholding as required by the Foreign Investment in Real Property Tax Act, (hereinafter "FIRPTA"), Seller additionally agrees that such Tax Withholding must be collected from Seller by Buyer's Closing Agent at the time of Closing. In the event Seller is not subject to FIRPTA, Seller shall be required as a condition of Closing to sign appropriate affidavits certifying that Seller is not subject to FIRPTA. It is Seller's responsibility to seek independent tax advice or counsel prior to the Closing Date regarding such tax matters.

2. **Buyer Expenses.** Buyer shall pay all transfer taxes and recording fees on deed of conveyance and deed of trust; Buyer's Closing fee, document preparation fee and/or attorney's fees; preparation of note, deed of trust, and other loan documents; mortgage loan inspection or boundary line survey; credit report; required premiums for private mortgage, hazard and flood insurance; required reserved deposits for insurance premiums and taxes; prepaid interest; re-inspection fees pursuant to appraisal; and any costs incident to obtaining and closing a loan, including but not limited to: appraisal, origination, discount points, application, commitment, underwriting, document review, courier, assignment, photo, tax service notary fees, and any wire fee or other charge imposed for the disbursement of the Seller's proceeds according to the terms of this Agreement.

3. **Title Expenses.** Cost of title search, mortgagee's policy and owner's policy (rates to be as filed with the Tennessee Department of Commerce and Insurance) shall be paid as follows:

Paid by seller

Simultaneous issue rates shall apply.

Not all of the above items are applicable to every transaction and may be modified as follows:

Closing Agency for Buyer: Nashville Title (Hal) 615-385-5944

Closing Agency for Seller: The McNamee Firm 901-758-1051

C. **Financial Contingency – Loan(s) To Be Obtained:** This Agreement is conditioned upon Buyer's ability to obtain a loan(s) in the principal amount up to \_\_\_\_\_% of the Purchase Price listed above to be secured by a deed of trust on the Property. "Ability to obtain" as used herein means that Buyer is qualified to receive the loan described herein based upon Lender's customary and standard underwriting criteria. In consideration of Buyer, having acted in good faith and in accordance with the terms below, being unable to obtain financing by the Closing Date, the sufficiency of such consideration being hereby acknowledged, Buyer may terminate this Agreement by providing written notice via the Notification form or equivalent written notice. Seller shall have the right to request any supporting documentation regarding loan denial. Upon termination, Buyer is entitled to a refund of the Earnest Money/Trust Money. Lender is defined herein as the financial institution funding the loan.

The loan shall be of the type selected below (Select the appropriate boxes. Unselected items will not be part of this Agreement):

- |   |  |
|---|--|
| <input type="checkbox"/> Conventional Loan        | <input type="checkbox"/> FHA Loan; attach addendum |
| <input type="checkbox"/> VA Loan; attach addendum | <input type="checkbox"/> Other _____               |

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Buyer may apply for a loan with different terms and conditions and also Close the transaction provided all other terms and conditions of this Agreement are fulfilled and the new loan does not increase any costs charged to Seller. Buyer shall be obligated to Close this transaction if Buyer has the ability to obtain a loan with terms as described herein and/or any other loan for which Buyer has applied and been approved.

**Loan Obligations: The Buyer agrees and/or certifies as follows:**

- (1) Within three (3) days after the Binding Agreement Date, Buyer shall make application for the loan and shall pay for credit report. Buyer shall immediately notify Seller or Seller's representative of having applied for the loan and provide Lender's name and contact information, and that Buyer has instructed Lender to order credit report. Such certifications shall be made via the Notification form or equivalent written notice;
- (2) Within fourteen (14) days after the Binding Agreement Date, Buyer shall warrant and represent to Seller via the Notification form or equivalent written notice that:
  - a. Buyer has secured evidence of hazard insurance which will be effective at Closing and Buyer shall notify Seller of the name of the hazard insurance company;
  - b. Buyer has notified Lender of an Intent to Proceed and has available funds to Close per the signed Loan Estimate; and
  - c. Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid.
- (3) Buyer shall pursue qualification for and approval of the loan diligently and in good faith;
- (4) Buyer shall continually and immediately provide requested documentation to Lender and/or loan originator;
- (5) Unless otherwise stated in this Agreement, Buyer represents that this loan is not contingent upon the lease or sale of any other real property and the same shall not be used as the basis for loan denial; and
- (6) Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain the Primary Loan or any other loan referenced herein.

Should Buyer fail to timely comply with 2.C.(1) and/or 2.C.(2) above and provide notice as required, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller the requested documentation within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated.

**THIS BOX MUST BE CHECKED IN ORDER FOR IT TO BE A PART OF THIS AGREEMENT.**

**X Financing Contingency Waived (e.g. "All Cash", etc.):**

Buyer's obligation to Close shall not be subject to any financial contingency. Buyer reserves the right to obtain a loan. Buyer will furnish proof of available funds to close in the following manner: \_\_\_\_\_ (e.g. bank statement, Lender's commitment letter) within five (5) days after Binding Agreement Date. Should Buyer fail to do so, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller with the requested notice within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated. Failure to Close due to lack of funds shall be considered default by Buyer.

In the event that this Agreement is contingent upon an appraisal, Buyer must order the appraisal and provide Seller with the name and telephone number of the appraisal company and proof that appraisal was ordered within five (5) days of the Binding Agreement Date. Should Buyer fail to do so, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller with the requested notice within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation is terminated.

3. **Earnest Money/Trust Money.** Buyer has paid or will pay within 3 days after the Binding Agreement Date to Nashville Title (name of Holder) ("Holder") located at 2818 Bransford Ave. Nashville, TN 37211 (address of Holder), an Earnest Money/Trust Money deposit of \$ 10,000 by check (OR \_\_\_\_\_) ("Earnest Money/Trust Money").

- A. **Failure to Receive Earnest Money/Trust Money.** In the event Earnest Money/Trust Money is not timely received by Holder or Earnest Money/Trust Money check or other instrument is not honored, for any reason by the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller of the Buyer's failure to deposit the agreed upon Earnest Money/Trust Money. Buyer shall then have one (1) day to deliver Earnest Money/Trust Money in immediately available funds to Holder. In the event Buyer does not deliver such funds, Buyer is in default and Seller shall have the right to terminate this Agreement by delivering to Buyer or Buyer's representative written

notice via the Notification form or equivalent written notice. In the event Buyer delivers the Earnest Money/Trust Money in immediately available funds in the form of a wire transfer or cashier's check to Holder before Seller elects to terminate, Seller shall be deemed to have waived his right to terminate, and the Agreement shall remain in full force and effect.

**B. Handling of Earnest Money/Trust Money upon Receipt by Holder.** Earnest Money/Trust Money is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this Earnest Money/Trust Money paragraph or as specified in the Special Stipulations paragraph contained at paragraph 15 herein. Holder shall disburse Earnest Money/Trust Money only as follows:

- (a) at Closing to be applied as a credit toward Buyer's Purchase Price;
- (b) upon a written agreement signed by all parties having an interest in the funds;
- (c) upon order of a court or arbitrator having jurisdiction over any dispute involving the Earnest Money/Trust Money;
- (d) upon a reasonable interpretation of the Agreement; or
- (e) upon the filing of an interpleader action with payment to be made to the clerk of the court having jurisdiction over the matter.

Holder shall be reimbursed for, and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney's fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder. No party shall seek damages from Holder (nor shall Holder be liable for the same) for any matter arising out of or related to the performance of Holder's duties under this Earnest Money/Trust Money paragraph. Earnest Money/Trust Money shall not be disbursed prior to fourteen (14) days after deposit unless written evidence of clearance by bank is provided.

**4. Closing, Prorations, Special Assessments and Association Fees.**

**A. Closing Date.** This transaction shall be closed ("Closed") (evidenced by delivery of warranty deed and payment of Purchase Price, the "Closing"), and this Agreement shall expire at 11:59 p.m. local time on the 1<sup>st</sup> day of MARCH, 2018 ("Closing Date"), or on such earlier date as may be agreed to by the parties in writing. Such expiration does not extinguish a party's right to pursue remedies in the event of default. Any extension of this date must be agreed to by the parties in writing via the Closing Date/Possession Date Amendment or equivalent written agreement.

**1. Possession.** Possession of the Property is to be given (Select the appropriate boxes below. Unselected items will not be part of this Agreement):

☒ at closing as evidenced by delivery of warranty deed and payment of Purchase Price;

OR

☐ as agreed in the attached and incorporated Temporary Occupancy Agreement;

**B. Prorations.** Real estate taxes, rents, dues, maintenance fees, and association fees on said Property for the calendar year in which the sale is Closed shall be prorated as of the Closing Date. In the event of a change or reassessment of taxes for the calendar year after Closing, the parties agree to pay their recalculated share. Real estate taxes, rents, dues, maintenance fees, and association fees for prior years and roll back taxes, if any, will be paid by Seller.

**C. Special Assessments.** Special Assessments approved or levied prior to the Closing Date shall be paid by Seller at or prior to Closing unless otherwise agreed as follows:

**D. Association Fees.** Buyer shall be responsible for all homeowner or condominium association transfer fees, related administration fees (not including statement of accounts), capital expenditures/contributions incurred due to the transfer of the Property and/or like expenses which are required by the association, property management company and/or the bylaws, declarations or covenants for the Property (unless otherwise specifically addressed herein and/or unless specifically chargeable to Seller under applicable bylaws, declarations, and/or neighborhood covenants).

**5. Title and Conveyance.**

**A.** Seller warrants that at the time of Closing, Seller will convey or cause to be conveyed to Buyer or Buyer's assign(s) good and marketable title to said Property by general warranty deed, subject only to:

- (1) Zoning;
- (2) Setback requirements and general utility, sewer, and drainage easements of record on the Binding Agreement Date upon which the improvements do not encroach;
- (3) Subdivision and/or condominium declarations, covenants, restrictions, and easements of record on the Binding Agreement Date; and
- (4) Leases and other encumbrances specified in this Agreement.

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If title examination, closing or loan survey pursuant to Tenn. Code Ann. § 62-18-126, boundary line survey, or other information discloses material defects, Buyer may, at Buyer's discretion:

(1) accept the Property with the defects OR

(2) require Seller to remedy such defects prior to the Closing Date. Buyer shall provide Seller with written notice of such defects via the Notification form or equivalent written notice. If defects are not remedied prior to the Closing Date, Buyer may elect to extend the Closing Date by mutual written agreement evidenced by the Closing Date/Possession Amendment form or other written equivalent. If defects are not remedied by the Closing Date or any mutually agreed upon extension thereof, this Agreement shall terminate, and Buyer shall be entitled to a refund of Earnest Money/Trust Money.

Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Tennessee will insure at its regular rates, subject only to standard exceptions. The title search or abstract used for the purpose of evidencing good and marketable title must be acceptable to the title insurance agent and the issuing title insurance company. Seller agrees to execute such appropriate affidavits and instruments as may be required by the issuing title insurance company.

B. Deed. Deed to be made in the name of Facility Development Group or Assigns. The manner in which Buyer takes title determines ownership and survivorship rights. It is Buyer's responsibility to consult the closing agency or attorney prior to Closing.

6. Inspections and other requirements made a part of this Agreement.

ALL INSPECTIONS ARE TO BE MADE AT BUYER'S EXPENSE. Buyer, its inspectors and/or representatives shall have the right and responsibility to enter the Property during normal business hours for the purpose of making inspections and/or tests. Buyer agrees to indemnify Seller for the acts of themselves, their inspectors and/or representatives in exercising their rights under this paragraph. Buyer's obligations to indemnify Seller shall also survive the termination of this Agreement by either party, which shall remain enforceable. Buyer shall make such inspections as indicated in this paragraph and either accept the Property in its present condition by written notice to Seller or terminate the Agreement as provided for in each section marked below.

[Select any or all of the following stipulations. Unselected items are not a part of this Agreement.]

☒ A. Feasibility Study. Buyer shall have the right to review all aspects of the Property, including but not limited to, all governmental, zoning, soil and utility service matters related thereto. In consideration of Buyer having conducted Buyer's good faith review as provided for herein, the sufficiency of such consideration being hereby acknowledged, Buyer shall provide written notification to Seller and/or Seller's Broker within \_\_\_\_\_ days after Binding Agreement Date that Buyer is not satisfied with the results of such review, and this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money/Trust Money to Buyer. If Buyer fails to provide notice, then this contingency shall be deemed to have been waived by Buyer. Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit the Property for the purpose of (1) inspection thereof and (2) conducting such soil and other tests thereon as are deemed reasonably necessary by Buyer. Buyer hereby agrees to indemnify and hold Seller, Broker, and Broker's Affiliated Licensees harmless from and against any and all loss, injury, cost, or expense associated with Buyer's inspection of and entry upon Property.

☒ B. Building Permit. This Agreement is contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to make specific improvements on the Property. In consideration of Buyer, having acted in good faith, being unable to acquire all required licenses and permits from the appropriate governmental authority to make specific improvements to the Property, the sufficiency of such consideration hereby being acknowledged, Buyer may terminate this agreement by providing written notification to Seller and/or Seller's Broker within \_\_\_\_\_ days after the Binding Agreement Date. Upon termination, holder shall promptly refund the Earnest Money/Trust Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

☒ C. Permit for Sanitary Septic Disposal System. This Agreement is contingent upon the Buyer's ability to obtain a permit for a sanitary septic disposal system from the respective Tennessee Ground Water Protection Office for the county in which the Property is located (generally, located at the local Health Department) to be placed on the Property in a location consistent with Buyer's planned improvements. In consideration of Buyer, having acted in good faith, being unable to meet this condition, the sufficiency of such consideration being hereby acknowledged, Buyer must notify Seller and/or Seller's Broker in writing within \_\_\_\_\_ days after the Binding Agreement Date. With proper notice, the Agreement is voidable by Buyer and Earnest Money/Trust Money refunded. If Buyer fails to provide said notice, this contingency shall be deemed to have been waived by Buyer.

☐ D. Rezoning. This Agreement is contingent upon the Property being rezoned to \_\_\_\_\_ by the appropriate governmental authorities on or before \_\_\_\_\_. (Buyer or Seller)

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\_\_\_\_\_ shall be responsible for pursuing such rezoning, and paying all associated cost. All rezoning applications shall be submitted to Seller for Seller's approval prior to filing, which approval shall not be unreasonably withheld. All parties agree to cooperate, to sign the necessary documentation and to support the rezoning application. In consideration of Buyer having acted in good faith, Buyer may provide notification to Seller and/or Seller's Broker within 48 hours after the above date that the Property cannot be so zoned, the sufficiency of such consideration being hereby acknowledged, and this Agreement shall automatically terminate. Upon termination, holder shall promptly refund the Earnest Money/Trust Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

- ☐ **E. Well Test.** This Agreement is contingent upon the well water serving the Property passing testing for suitability for drinking as performed by a testing laboratory selected by Buyer, or required by Buyer's Lender, prior to Closing. Buyer shall be responsible for ordering, supervising and paying for any such well water sample test. This Agreement shall also be contingent upon said well providing an adequate quantity of water to serve Buyer's intended purpose for the Property. In consideration of Buyer, having conducted a well test as provided for herein, the sufficiency of such consideration being hereby acknowledged, Buyer may provide written notification to Seller and/or Seller's Broker within \_\_\_\_\_ days after the Binding Agreement Date that test results are unacceptable, and in such event this Agreement shall automatically terminate, and Holder shall promptly refund the Earnest Money/Trust Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

☒ **F. Other Inspections.** See Special Stipulations for additional inspections required by Buyer.

- ☐ **G. No Inspection Contingencies.** Buyer accepts the Property in its present condition. All parties acknowledge and agree that the Property is being sold "AS IS" with any and all faults.

**7. Final Inspection.** Buyer and/or his inspectors/representatives shall have the right to conduct a final inspection of Property on the Closing Date and/or within 1 day(s) prior to Closing Date only to confirm Property is in the same or better condition as it was on the Binding Agreement Date, normal wear and tear excepted, and to determine that all repairs/replacements have been completed. Property shall remain in such condition until the Closing Date at Seller's expense. Closing of this sale constitutes acceptance of Property in its condition as of the time of Closing, unless otherwise noted in writing.

**8. Buyer's Additional Due Diligence Options.** If any of the matters below are of concern to Buyer, Buyer should address the concern by specific contingency in the Special Stipulations paragraph of this Agreement.

**A. Survey and Flood Certification.** Survey Work and Flood Certifications are the best means of identifying boundary lines and/or encroachments and easements or flood zone classifications. Buyer may obtain a survey, closing loan survey or Boundary Line Survey and Flood Zone Certifications.

**B. Insurability.** Many different issues can affect the insurability and the rates of insurance for property. These include factors such as changes in the Flood Zone Certifications, changes to the earthquake zones maps, the insurability of the buyer, and previous claims made on the Property. It is the right and responsibility of Buyer to determine the insurability, coverage and the cost of insuring the Property. It is also the responsibility of Buyer to determine whether any exclusions will apply to the insurability of said Property.

**C. Water Supply.** The system may or may not meet state and local requirements. It is the right and responsibility of Buyer to determine the compliance of the system with state and local requirements. [For additional information on this subject, request the "Water Supply and Waste Disposal Notification" form.]

**D. Waste Disposal.** The system may or may not meet state and local requirements. It is the right and responsibility of Buyer to determine the compliance of the system with state and local requirements. In addition, Buyer may, for a fee, obtain a septic system inspection letter from the Tennessee Department of Environment and Conservation, Division of Ground Water Protection. [For additional information on this subject, request the "Water Supply and Waste Disposal Notification" form.]

**E. Title Exceptions.** At Closing, the general warranty deed will be subject to subdivision and/or condominium declarations, covenants, restrictions and easements of record, which may impose obligations and may limit the use of the Property by Buyer.

**9. Disclaimer.** It is understood and agreed that the real estate firms and real estate licensee(s) representing or assisting Seller and/or Buyer and their brokers (collectively referred to as "Brokers") are not parties to this Agreement and do not have or assume liability for the performance or nonperformance of Seller or Buyer. Buyer and Seller agree that Brokers shall not be responsible for any of the following, including but not limited to, those matters which could have been revealed through a survey, flood certification, title search or inspection of the Property: the insurability of the Property or cost to insure the Property; for the condition of the Property, any portion thereof, or any item therein; for building products and construction techniques; for any geological issues present on the Property; for any issues arising out of the failure to physically inspect the Property prior to entering into this Agreement and/or Closing; for the necessity or cost of any repairs to the Property; for hazardous or toxic materials; for the tax or legal consequences of this transaction; for the

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availability, capability, and/or cost of utility, sewer, septic, or community amenities; for any proposed or pending condemnation actions involving the Property; for acreage or square footage; for applicable boundaries of school districts or other school information; for the appraised or future value of the Property; for any condition(s) existing off the Property which may affect the Property; for the terms, conditions, and availability of financing; and for the uses and zoning of the Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that they have not relied upon any advice, representations or statements of Brokers (including their firms and affiliated licensees) and waive and shall not assert any claims against Brokers (including their firms and affiliated licensees) involving same. Buyer and Seller understand that it has been strongly recommended that if any of these or any other matters concerning the Property are of concern to them, that they secure the services of appropriately credentialed experts and professionals of Buyer's or Seller's choice for the independent expert advice and counsel relative thereto.

10. **Brokerage.** As specified by separate agreement, Seller agrees to pay Listing Broker at Closing the agreed upon compensation. The Listing Broker will direct the closing agency to pay the Selling Broker, from the compensation received, an amount in accordance with the terms and provisions specified by separate agreement. The parties agree and acknowledge that the Brokers involved in this transaction may receive compensation from more than one party. All parties to this Agreement agree and acknowledge that any real estate firm involved in this transaction shall be deemed a third party beneficiary only for the purposes of enforcing their commission rights, and as such shall have the right to maintain an action on this Agreement for any and all compensations due and any reasonable attorney's fees and court costs.

11. **Default.** Should Buyer default hereunder, the Earnest Money/Trust Money shall be forfeited as damages to Seller and shall be applied as a credit against Seller's damages. Seller may elect to sue, in contract or tort, for additional damages or specific performance of the Agreement, or both. Should Seller default, Buyer's Earnest Money/Trust Money shall be refunded to Buyer. In addition, Buyer may elect to sue, in contract or tort, for damages or specific performance of this Agreement, or both. In the event that any party hereto shall file suit for breach or enforcement of this Agreement (including suits filed after Closing which are based on or related to the Agreement), the prevailing party shall be entitled to recover all costs of such enforcement, including reasonable attorney's fees. In the event that any party exercises its right to terminate due to the default of the other pursuant to the terms of this Agreement, the terminating party retains the right to pursue any and all legal rights and remedies against the defaulting party following termination. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies, rights and/or obligations as a defense in the event of a dispute.

12. **Other Provisions.**

A. **Binding Effect, Entire Agreement, Modification, Assignment, and Binding Agreement Date.** This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and assigns. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. It is hereby agreed by both Buyer and Seller that any real estate agent working with or representing either party shall not have the authority to bind the Buyer, Seller, or any assignee to any contractual agreement unless specifically authorized in writing within this Agreement. Any assignee shall fulfill all the terms and conditions of this Agreement. The parties hereby authorize either licensee to insert the time and date of receipt of the notice of acceptance of the final offer and further agree to be bound by such as the Binding Agreement Date following the signatory section of this Agreement, or Counter Offer, if applicable.

B. **Survival Clause.** Any provision contained herein, which by its nature and effect is required to be performed after Closing shall survive the Closing and delivery of the deed, and shall remain binding upon the parties to this Agreement and shall be fully enforceable thereafter.

C. **Governing Law and Venue.** This Agreement is intended as a contract for the purchase and sale of real property and shall be interpreted in accordance with the laws and in the courts of the State of Tennessee.

D. **Time of Essence.** Time is of the essence in this Agreement.

E. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of Property. In the event a performance deadline, other than the Closing Date (as defined in paragraph 4 herein), Date of Possession (as defined in paragraph 4 herein), and Offer Expiration Date (as defined in paragraph 16 herein), occurs on a Saturday, Sunday or legal holiday, the performance deadline shall extend to the next following business day. Holidays as used herein are those days deemed federal holidays pursuant to 5 U.S.C. § 6103. In calculating any time period under this Agreement, the commencement day shall be the day

- 381 following the initial date (e.g. Binding Agreement Date).
- 382 **F. Responsibility to Cooperate.** Buyer and Seller agree to timely take such actions and produce, execute, and/or
- 383 deliver such information and documentation as is reasonably necessary to carry out the responsibilities and
- 384 obligations of this Agreement. Except as to matters which are occasioned by clerical errors or omissions or
- 385 erroneous information, the approval of the closing documents by the parties shall constitute their approval of any
- 386 differences between this Agreement and the Closing. Buyer and Seller agree that if requested after Closing, they
- 387 will correct any documents and pay any amounts due where such corrections or payments are appropriate by reason
- 388 of mistake, clerical errors or omissions, or the result of erroneous information.
- 389 **G. Notices.** Except as otherwise provided herein, all notices and demands required or permitted hereunder shall be in
- 390 writing and delivered either (1) in person; (2) by a prepaid overnight delivery service; (3) by facsimile transmission
- 391 (FAX); (4) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or
- 392 (5) Email. **NOTICE** shall be deemed to have been given as of the date and time it is actually received. Receipt of
- 393 notice by the real estate licensee or the Broker assisting a party as a client or customer shall be deemed to be notice
- 394 to that party for all purposes under this Agreement as may be amended, unless otherwise provided in writing.
- 395 **H. Risk of Loss.** The risk of hazard or casualty loss or damage to the Property shall be borne by Seller until transfer of
- 396 title. If casualty loss prior to Closing exceeds 10% of the Purchase Price, Seller or Buyer may elect to terminate this
- 397 Agreement with a refund of Earnest Money/Trust Money to Buyer.
- 398 **I. Equal Housing.** This Property is being sold without regard to race, color, sex, religion, handicap, familial status, or
- 399 national origin.
- 400 **J. Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for
- 401 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this
- 402 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect. In the
- 403 event that the contract fails due to the severed provisions, then the offending language shall be amended to be in
- 404 conformity with state and federal law.
- 405 **K. Property Delivery Condition.** Seller shall deliver Property clean and free of debris at time of possession.
- 406 **L. Contract Construction.** This Agreement or any uncertainty or ambiguity herein shall not be construed against any
- 407 party but shall be construed as if all parties to this Agreement jointly prepared this Agreement.
- 408 **M. Other.** In further consideration of Buyer's right to legally, properly and in good faith invoke a right to terminate
- 409 this Agreement pursuant to any specific Buyer contingency as stated herein, Buyer agrees, upon Seller's request or
- 410 as provided for in this Agreement, to provide Seller or Seller's representative with copies of any supporting
- 411 documentation which supports Buyer's right to exercise said contingency, the sufficiency and adequacy of said
- 412 consideration being acknowledged. Any such supporting documents shall be provided for Seller's benefit only and
- 413 Seller shall not disseminate the same to third parties. However, Buyer shall not be required to provide any
- 414 documents to Seller in violation of any confidentiality agreement or copyright protection laws, if applicable.
- 415 **13. Method of Execution.** The parties agree that signatures and initials transmitted by facsimile, other photocopy
- 416 transmittal, or by transmittal of digital signature as defined by the applicable State or Federal law will be acceptable and
- 417 may be treated as originals and that the final Lot/Land Purchase and Sale Agreement containing all signatures and initials
- 418 may be executed partially by original signature and partially on facsimile, other photocopy documents, or by digital
- 419 signature as defined by the applicable State or Federal law.
- 420 **14. Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part
- 421 of this Agreement:
- 422
- 423
- 424
- 425 **15. Special Stipulations.** The following Special Stipulations, if conflicting with any preceding paragraph, shall control:
- 426 Buyer shall have the right to conduct a feasibility study to satisfy the State of Tennessee
- 427 requirements for proposed homes.
- 428
- 429 Buyer shall be able to acquire all required licenses and permits from the appropriate
- 430 government agencies to make specific improvements to the properties including building two
- 431 residences.
- 432
- 433 Contingent upon Buyer receiving approval from the applicable State and local agencies for
- 434 site use and site plans as required by Buyer for development of group homes.
- 435
- 436 Buyer shall pursue approvals in a timely fashion to facilitate closing.
- 437
- 438 If the state of TN requires additional time to complete their approval through no fault of
- 439 Buyer, Buyer requests up to an additional thirty days to close.

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16. Time Limit of Offer. This Offer may be withdrawn at any time before acceptance with Notice. Offer terminates if not countered or accepted by 5:00 o'clock ☐ a.m. / ☒ p.m. on the 1st day of November, 2017.

**LEGAL DOCUMENTS:** This is an important legal document creating valuable rights and obligations. If you have any questions about it, you should review it with your attorney. Neither the Broker nor any Agent or Facilitator is authorized or qualified to give you any advice about the advisability or legal effect of its provisions.

**NOTE:** Any provisions of this Agreement which are preceded by a box "☐" must be marked to be a part of this Agreement. By affixing your signature below, you also acknowledge that you have reviewed each page and have received a copy of this Agreement.

**IMPORTANT NOTICE:** Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.

Buyer hereby makes this offer.

BUYER

10/31/17 at 4:30 o'clock ☐ a.m. / ☒ p.m.  
Offer Date

BUYER

at \_\_\_\_\_ o'clock ☐ a.m. / ☐ p.m.  
Offer Date

Seller hereby:

- ☐ ACCEPTS - accepts this offer.  
☐ COUNTERS - accepts this offer subject to the attached Counter Offer(s).  
☐ REJECTS this offer and makes no counter offer.

Mary A Shelton  
SELLER

11/1/17 at 10:45 o'clock ☐ a.m. / ☒ p.m.  
Date

Ken Andrew Thompson  
SELLER

11/1/17 at 11:00 o'clock ☒ a.m. / ☐ p.m.  
Date

Joseph Reda  
Ken Thompson  
FOA

**Binding Agreement Date.** This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date") the last offeror, or licensee of the offeror, receives notice of offeree's acceptance.

Notice of acceptance of the final offer was received on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock by \_\_\_\_\_ (Name).

**For Information Purposes Only:**

Listing Company: Keller Williams Realty

Listing Firm Address: \_\_\_\_\_

Firm License No.: \_\_\_\_\_

Firm Telephone No.: 901-261-7900

Listing Licensee: Chris Thompson

Licensee License Number: \_\_\_\_\_

Licensee Email: Chris.A.Thompson@gmail.com

Home Owner's / Condominium Association ("HOA/COA"): \_\_\_\_\_

Selling Company: Berkshire Hathaway Home Services

Selling Firm Address: 5107 Maryland Way Brentwood, TN 37027

Firm License No.: \_\_\_\_\_

Firm Telephone No.: 615-661-7800

Selling Licensee: Doug Brooks

Licensee License Number: 282637

Licensee Email: dlbrooks@comcast.net

HOA / COA Phone: \_\_\_\_\_

Property Management Company: \_\_\_\_\_

Phone: \_\_\_\_\_

HOA/COA Email: \_\_\_\_\_

Email: \_\_\_\_\_

NOTE: This form is provided by TAR to its members for their use in real estate transactions and is to be used as is. By downloading and/or using this form, you agree and covenant not to alter, amend, or edit said form or its contents except as where provided in the blank fields, and agree and acknowledge that any such alteration, amendment or edit of said form is done at your own risk. Use of the TAR logo in conjunction with any form other than standardized forms created by TAR is strictly prohibited. This form is subject to periodic revision and it is the responsibility of the member to use the most recent available form.

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REALTORS

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Version 08/21/2017

Instant





November 15, 2017

Ladies and Gentlemen:

We are pleased to present this option ("Option") to you for the lease ("Lease") of the real property and building described below, on the following terms and conditions:

Lessor: FACILITIES DEVELOPMENT GROUP, LLC

Lessee: OPEN ARMS CARE CORPORATION

Premises: SHELBY #3 \_\_\_\_ Old Dexter Road, Cordova, Tennessee 38016 (This site does not currently have a separate street address, but is a lot of approximately 4.1 acres, such lot being the south half of the approximately 8.2 acre parcel located on the southwest corner of the intersection of Dexter Road and Dexter Lane in Cordova (Shelby County), Tennessee 38016, and also described as Parcel 096507 00307C in the records of the Shelby County Tax Assessor).

Intended Use: One (1) eight-person ICF/IID facility (the "Facility").

Effective Date and Term: The Effective Date of the Lease shall be the first day of the month after the exercise of this Option (as determined below), and the term of the Lease shall commence on the Effective Date and shall terminate and expire at 11:59 p.m. on the date which is thirty (30) years after the date of the later of (i) licensure of the Facility by the Tennessee Department of Developmental and Intellectual Disabilities or (ii) certification of the Facility by the Bureau of TennCare (the "Certification Date").

Rent: One Dollar (\$1) per year from the Effective Date until the Certification Date for the Facility, and thereafter the rent shall be an amount consistent with then-prevailing fair market value rental rates and other lease terms and conditions for similar properties, the annual rent not to exceed One Hundred Sixty Eight Thousand Three Hundred Thirty Three Dollars (\$168,333) per year, the exact amount to be set forth in the Lease, payable to Lessor in equal monthly installments in advance.

Other Lease Terms: Other terms of the Lease shall be established by the parties at the effective date of the Lease, in the same format and general terms and conditions as the leases for other similar facilities being leased to Lessee, subject to all such terms,

OPEN ARMS CARE CORPORATION

Page 2

conditions and amounts being consistent with fair market values and other then-prevailing market terms and conditions.

In consideration of \$10.00 cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, Lessor grants to Lessee the option described above, which must be exercised within thirty (30) days of the final approval of the Certificate of Need application with regard to the Facility, as is currently pending before the Tennessee Health Services and Development Agency ("HSDA"), to allow the development and construction of the Facility as an eight (8) person ICF/IID facility (the "CON"). Upon exercise of the option, the Lessor and Lessee shall in good faith negotiate the definitive terms of a lease agreement for the long-term lease of the Facility, all as described above. If such option is not exercised by such date, this Option shall terminate and be of no further force and effect.

Lessor and Lessee acknowledge that Lessor cannot obtain financing for the Facility until after the CON for the Facility has been approved by the HSDA. If for any reason financing acceptable to Lessor has not been obtained with sixty (60) days of the final approval of the CON, this Option shall terminate, with no further rights or obligations of either party to the other.

Sincerely,

FACILITIES DEVELOPMENT GROUP, LLC

By: [Signature]

Title: Principal

Accepted:

OPEN ARMS CARE CORPORATION

By: [Signature]

Title: CEO



**SHELBY #3**  
**LEASE AGREEMENT**  
**DATED AS OF \_\_\_\_\_, 2018**  
**BY AND BETWEEN**  
**FACILITIES DEVELOPMENT GROUP, LLC**  
**AS LANDLORD,**  
**AND**  
**OPEN ARMS CARE CORPORATION,**  
**AS TENANT**

**LEASED PROPERTY ADDRESS:** \_\_\_\_\_ Old Dexter Road  
Cordova, Tennessee\*

\*This site does not currently have a separate street address, but is a lot of approximately 4.1 acres, such lot being the south half of the approximately 8.2 acre parcel located on the southwest corner of the intersection of Dexter Road and Dexter Lane in Cordova (Shelby County), Tennessee 38016, and also described as Parcel 096507 00307C in the records of the Shelby County Tax Assessor.

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## LEASE AGREEMENT

This **LEASE AGREEMENT** (this "**Lease**") is one of multiple lease agreements entered into as of \_\_\_\_\_, 2018 (the "**Effective Date**") by and between FACILITIES DEVELOPMENT GROUP, LLC, a Tennessee limited liability company, as landlord ("**Landlord**"), and OPEN ARMS CARE CORPORATION, a Georgia nonprofit corporation, as tenant ("**Tenant**").

### WITNESSETH:

**WHEREAS**, Landlord owns the real property described on **Exhibit A** attached hereto, and is developing one (1) of the eight (8) eight-person replacement ICF/IID facilities on such real property, with all of such eight (8) facilities to be leased from Landlord to Tenant pursuant to this Lease and similar other leases (collectively the "**2018 Leases**")); and

**WHEREAS**, pursuant to this Lease Landlord desires to lease to Tenant all of Landlord's interests in the real property described on Exhibit A, including the improvements to be constructed thereon by Landlord (as such improvements are generally described on Exhibit A and further described below (the "**Leased Property**")), and Tenant desires to lease from Landlord all of Landlord's interests in the Leased Property, all of which are subject to and conditioned upon the terms and conditions set forth herein and in a separate Omnibus Agreement with respect to all the 2018 Leases (the "**Omnibus Agreement**").

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

### ARTICLE 1

#### DEFINITIONS

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) all capitalized terms herein shall have the meanings assigned to them in the Omnibus Agreement, and include the plural as well as the singular, (ii) all accounting terms not otherwise defined herein or therein shall have the meanings assigned to them in accordance with GAAP, (iii) all references in this Lease to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease, and (iv) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

### ARTICLE 2

#### **LEASED PROPERTY AND TERM, RIGHT OF FIRST OFFER AND OPTION TO PURCHASE**

2.1 **Leased Property**. Upon and subject to the terms and conditions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of

Landlord's right, title and interest in and to all of the following (collectively, the "**Leased Property**"), and grants to Tenant the right to use and occupy the Leased Property for the purposes, and subject to the limitations, set forth in this Lease:

(a) the parcel of real property more particularly described in **Exhibit B** attached hereto and made a part hereof (collectively the "**Land**");

(b) all buildings, structures, fixtures and other improvements of every kind, including, without limitation, all roofs, plumbing systems, electric systems and HVAC systems, roadways, pavilions, alleyways, parking areas and facilities, landscaping, sidewalks, curbs, connecting tunnels, utility pipes, irrigation systems, conduits and lines (on site and off site), appurtenant to or presently situated upon the Land (collectively, the "**Leased Improvements**");

(c) all easements, hereditaments, appurtenances and all other rights, privileges and entitlements, if any, relating to the Land and the Leased Improvements;

(d) all Initial Landlord P&E and all P&E Replacements;

(e) all moveable machinery, equipment, furniture, furnishings, computers or trade fixtures (including all vehicles, together with all supplies related thereto), owned by Landlord and located on or in the Leased Improvements, and all modifications, replacements, alterations and additions to such property, including without limitation, to the extent assignable by Landlord, any operating leases of any such Initial Landlord P&E, P&E Replacements or other machinery, equipment, furniture, furnishings, computers or trade fixtures, but specifically excluding all items included within the category of Tenant's Personal Property;

(f) all of the Leased Intangible Property;

(g) all maintenance, service and supply contracts, equipment leases, space leases (including without limitation, leases of storage spaces by any non-commercial tenant) and all other similar agreements affecting any of the Leased Property and/or the operation of the Business to the extent that such contracts are transferable, including, without limitation, the Permits and Operating Contracts, together with all prepayments and deposits held thereunder except to the extent to which such prepayments and/or deposits have been paid by Tenant from and after the Effective Date (it being agreed that Landlord shall, as of the Effective Date, make such prepayments and deposits which were paid by Landlord or its successors-in-interest actually available to Tenant for use in the operation of the Business); and

(h) all plans and specifications, blue prints, architectural plans, engineering diagrams and similar items specifically related to any of the Land or the Leased Improvements.

## **2.2 Intentionally Omitted.**

**2.3 Assignment of Permits.** Landlord and Tenant shall cooperate and take commercially reasonable efforts to cause all Permits related to the operation (but not ownership)

of the Leased Property to be obtained in the name of Tenant. Landlord shall, at no additional cost to Landlord (other than *de minimis* costs), cooperate in a commercially reasonable manner with Tenant in connection with Tenant maintaining all Permits. Tenant shall be responsible for the processing of all requests and/or applications for such Permits. Notwithstanding any other provision in this Lease to the contrary, in no event shall any Permit be assigned, transferred, or otherwise conveyed by Tenant to any Person (other than collateral assignments to Landlord), or utilized by Tenant in any location other than the current location of any specific Facility, without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion.

2.4 Condition of Leased Property. TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY MADE BY LANDLORD IN THIS LEASE, LANDLORD IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PROPERTY, THE BUSINESS OR ANY OF THE OTHER ITEMS INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE, ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS INCLUDING WEATHER-RELATED CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. TENANT AGREES THAT TENANT HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF LANDLORD OR ANY AGENT OF LANDLORD OR OTHER THIRD PARTY, INCLUDING ANY REAL ESTATE BROKER OR AGENT, EXCEPT AS EXPRESSLY MADE BY LANDLORD IN THIS LEASE. EXCEPT AS OTHERWISE PROVIDED IN THIS LEASE, TENANT HAS CONDUCTED, OR HAS HAD THE OPPORTUNITY TO CONDUCT, ITS OWN INSPECTIONS AND INVESTIGATIONS OF THE LEASED PROPERTY AND THE BUSINESS AND ASSUMES ALL RISK IN CONNECTION THEREWITH, AND TENANT HEREBY ACKNOWLEDGES AND AGREES THAT LANDLORD IS LEASING TO TENANT AND TENANT HEREBY ACCEPTS ALL OF THE LEASED PROPERTY, THE BUSINESS AND ANY OTHER ITEMS LEASED HEREBY "AS IS WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS COLLATERAL TO OR AFFECTING THE LEASED PROPERTY BY LANDLORD, ANY AGENT OF LANDLORD OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS SECTION SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS LEASE.

2.5 Term. The term of this Lease (the "Term") shall commence on the Effective Date and shall terminate and expire at 11:59 p.m. on the date which is thirty (30) years after the Certification Date.

2.6 INTENTIONALLY OMITTED.

2.7 Yield Up. Tenant shall, on or before the last day of the Term or upon the sooner termination thereof, peaceably and quietly surrender and deliver to Landlord all of the Facility Intellectual Property (pursuant to a form of assignment reasonably required by Landlord), all

Permits, and the Leased Property, including, without limitation, all Leased Improvements and P&E and all additions thereto and replacements thereof made from time to time during the Term, together with and including, without limitation, the P&E Replacements, in good order, condition and repair, reasonable wear and tear excepted, and free and clear of all Liens and encumbrances (other than Permitted Encumbrances, Liens or encumbrances in favor of or granted by Landlord, and any other encumbrances expressly permitted under the terms of this Lease), and Tenant shall fully cooperate with Landlord and use commercially reasonable efforts in transferring, to the extent transferable under Applicable Laws and without consideration or fee, any of the Permits, which Landlord determines, in its sole and absolute discretion, would be necessary or appropriate to continue to operate the Leased Property for its Permitted Use. Tenant acknowledges that the Initial Landlord P&E described on Exhibit E attached hereto and located at the Leased Property as of the Certification Date may be completely consumed and/or otherwise disposed of in the course of operation of the Leased Property during the Term. Tenant agrees that, at the expiration or earlier termination of this Lease (the "Termination Date"), Tenant shall fully restore the Initial Landlord P&E, inclusive with and after consideration of all P&E Replacements reasonably required to maintain and operate the Facility in the same conditions as exist on the Effective Date, reasonable wear and tear excepted, which will become the property of Landlord, to at least the approximate types and amounts (with reasonably equivalent value) as shown on Exhibit E, as otherwise required to be maintained by Tenant pursuant to this Lease. In the event of early termination of this Lease by Tenant, other than due to a default by Landlord which is not timely cured, all unpaid scheduled rent for the remainder of the Term, plus a prepayment premium, shall be due from Tenant to Landlord. At the expiration or earlier termination of this Lease, Tenant shall (i) retain all accounts receivable from its operation of the Property and Business subject to and net of the amount of such receivables due to Landlord or to the Reserve pursuant to the terms hereof, and (ii) remain liable for the payment of accounts payable which have accrued as of the date of termination or expiration of the Lease.

2.7.1 Limited Power of Attorney. By executing this Lease, Tenant hereby grants to Landlord its limited power of attorney to act as Tenant's duly authorized attorney-in-fact for the purpose of executing on behalf of Tenant any and all documents and applications necessary to permit the Landlord, or its assign, to make the requisite change of ownership license and certificate of need filings to ensure, at the termination or earlier expiration of this Lease, for any reason, that there be an orderly transfer of the Permits and any rights associated or related therewith in due course to enable the continued operation, without interruption, of the Leased Property for the same purposes as currently exist. This limited power of attorney shall be effective only if after Landlord's (or Landlord's assign's) giving due Notice to the Tenant upon the impending termination or expiration of this Lease requesting Tenant to fulfill its obligations to cooperate with Landlord or its assign by executing the prescribed State of Tennessee change of ownership and license applications necessary to vest the required licenses to operate the Leased Property, for the same purposes as currently exist, in the Landlord or its assign, and the Tenant has not performed such obligations within fifteen (15) days of Landlord's giving such Notice.

2.8 Grant of Easements, Etc. by Landlord. Landlord from time to time (i) may, at the reasonable request of any third party, or (ii) shall, at the reasonable request of Tenant or as required by any Government Agencies, at Landlord's cost and expense: (i) grant easements and other rights in the nature of easements; (ii) release existing easements or other rights in the nature of easements which are for the benefit of the Leased Property; (iii) dedicate or transfer unimproved portions of the Leased Property for road, highway or other public purposes; (iv)

execute petitions to have the Leased Property annexed to any municipal corporation or utility district; (v) execute amendments to any covenants and restrictions affecting the Leased Property; and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers (to the extent of its interest in the Leased Property), provided that any instrument requested may not materially impair or diminish Tenant's use of the Leased Property or adversely affect in any material respect the operation, value or financial viability of the Business, or otherwise materially increase Tenant's obligations or decrease its rights under this Lease. Landlord shall promptly provide Tenant with notice of any such request or requirement from a third party or Governmental Agency. In the event Landlord fails to timely provide any of the items described above, including the granting of any easement or similar item which has been requested by Tenant, Tenant may take such actions as may be deemed reasonably necessary to cause the granting of any easement or similar item as required by this Section 2.8.

2.9 Right of First Offer. Provided no Event of Default shall be continuing, prior to Landlord agreeing during the Term to sell or otherwise voluntarily transfer its fee simple interest in the Leased Property or prior to the direct or indirect sale or other voluntary transfer of any equity or membership interest in Landlord or its successors or assigns to any person or entity that is not an Affiliate of Landlord or Tenant (a "Third Party") (other than a collateral assignment by Landlord's parent entity to the Mortgagee holding the Facility Mortgage of its equity or membership interest in Landlord or such Mortgagee's further collateral assignment thereof), Tenant shall have an ongoing right of first offer to purchase Landlord's fee simple title to the Leased Property (the "ROFO Property"), on the terms and conditions as set forth in this Section 2.9 (the "Right of First Offer and Option") at "Fair Market Value" as determined pursuant to Exhibit G attached hereto (as applicable, the "ROFO Purchase Price"). Notwithstanding the foregoing, this Right of First Offer and Option is expressly subject to all right of the Mortgagee holding the Facility Mortgage, and any collateral assignee thereof, including the rights to receive payment satisfaction of the Facility Mortgage upon any transfer of the ROFO Property pursuant to this Section 2.9. However, if a Facility Mortgage on the Leased Property is outstanding, in no event shall the ROFO Purchase Price be less than the amount necessary to satisfy all amounts due and owing from Landlord to the Facility Mortgagee on the Leased Property at the time of closing.

Any Mortgagee or collateral assignee's agreement to consent to any such transfer and to release the lien of any applicable Facility Mortgage shall be subject to satisfaction of all other conditions to release set forth in any financing documents between the Landlord and its Facility Mortgagee, as collaterally assigned, a copy of which provisions have previously been delivered to the Tenant, and any modification of such release conditions shall not be made without the consent of the Tenant, which consent shall not be unreasonably withheld or delayed).

2.9.1 Notices. Landlord shall promptly deliver to Tenant a notice of such election to sell, together with a statement of the ROFO Purchase Price and closing date, which shall be incorporated into an agreement for the purchase and sale of the ROFO Property in the same form as attached hereto as Exhibit H (as may be supplemented and amended but only as agreed upon by Tenant and Landlord, the "Purchase Contract") (hereinafter defined as the "ROFO Notice"). Tenant may, within ten (10) Business Days after Landlord's delivery to Tenant of a ROFO Notice, may agree to purchase Landlord's fee simple interest in the portion of the Leased Property described in the Purchase Contract (the "ROFO Acceptance Notice").

2.9.2 Conditions of Sale. If, for any reason, (i) within said ten (10) Business Day Period, either Tenant does not reply to Landlord's ROFO Notice with a ROFO Acceptance Notice; or (ii) if Tenant submits a ROFO Acceptance Notice within said ten (10) Business Day Period, Tenant and Landlord shall not have entered into the Purchase Contract (as defined below) within twenty (20) Business Days after Landlord's delivery to Tenant of the Purchase Contract, then Landlord shall have the unrestricted right (without any obligation to do so) to sell the ROFO Property to any person or entity on such terms and conditions as shall be acceptable to Landlord in its sole but reasonable discretion. In the event Landlord does not sell the Leased Property to a Third Party within two hundred seventy (270) days after the expiration of such ten (10) Business Day Period or such twenty (20) Business Day period, as the case may be, and later opts to offer the Leased Property or an interest in Landlord again for sale, then Tenant's rights under this Section 2.9 shall be ongoing and effective. If the Right of First Offer and Option is waived and the purchase and sale of the ROFO Property is consummated with a Third Party, the purchaser of the ROFO Property shall assume this Lease and agree to perform each and every covenant of Landlord contained in this Lease (it being understood and agreed, however, that the provisions of this Section 2.9.2 shall no longer be applicable and Tenant shall attorn to such purchaser as Landlord hereunder, so long as such Third Party agrees to not disturb any of Tenant's rights and benefits under this Lease.

2.9.3 Right of First Offer Delivery. If Tenant timely and properly delivers to Landlord a ROFO Acceptance Notice as described in Section 2.9.1 above, then on or before the twentieth (20) Business Day after Landlord's delivery to Tenant of the Purchase Contract, Tenant and Landlord shall execute and deliver the Purchase Contract. Tenant shall continue to pay all Minimum Rent, Additional Rent and other rent and charges due and owing under this Lease through the date of the consummation of any such sale to Tenant.

2.9.4 Right of First Offer and Option Not Applicable to Certain Transfers. Without in any way (by implication or otherwise) expanding the scope of the Right of First Offer and Option, Tenant acknowledges and agrees that this Section 2.9.4 and the Right of First Offer and Option shall not be applicable to any sale of the Leased Property described below:

(a) Any transfer to any Affiliate of Landlord or Tenant, or to the Mortgagee holding the Facility Mortgage (or any designee or collateral assignee of such Mortgagee), including a transfer pursuant to any a collateral assignment by Landlord's parent entity to such Mortgagee (or any designee or collateral assignee of such Mortgagee) of the equity or membership interest in Landlord owned by Landlord's parent entity;

(b) Any mortgage or deed of trust made by Landlord, or any transfer made in connection with the foreclosure or other realization upon any such mortgage or deed of trust, or any transfer made in lieu of foreclosure; or

(c) Any transfer by condemnation, eminent domain or similar taking of the Leased Property, or any transfer made in lieu thereof.

Moreover, Landlord shall not be deemed to have breached the provisions of this Section if it shall have made or accepted any offer to sell Landlord's fee simple interest in the ROFO Property to a Third Party after the written waiver by Tenant of Tenant's rights under this Section 2.9.

2.9.5 Assignment of Right of First Offer and Option. Tenant shall not have the right to assign or transfer in any way any of Tenant's rights under this Section 2.9, including, without limitation, any rights of Tenant under any Purchase Contract entered into pursuant hereto.

2.9.6 Rights Personal to Original Tenant. Tenant's rights under this Section 2.9 are personal to Open Arms Care Corporation, the original Tenant under this Lease, and shall automatically terminate upon any assignment of this Lease by Tenant (whether by operation of law or otherwise). Before concluding any transfer pursuant to this Section 2.9, Tenant shall obtain an opinion from a certified public accountant with expertise regarding the reimbursement regulations for capital costs and depreciation for ICF-IID facilities located in Tennessee, acceptable to both Landlord and Tenant, that the transfer which is the subject of this Section 2.9 will not result in a recapture event or otherwise have a material adverse impact upon Landlord or Tenant with respect to any Minimum Rent, whether already paid or still due and payable.

2.10 Option to Purchase. Provided no Event of Default has occurred and is continuing under this Lease as of Tenant's exercise of any of its options to purchase the Leased Property pursuant to this Section 2.10, on the Option Closing Date established below to consummate the purchase of the Leased Property pursuant to Tenant's exercise of the applicable option, Tenant shall have the option to purchase all, but not less than all, of the Leased Property (the "**Purchase Option**") upon the following terms and conditions, provided Tenant is simultaneously exercising its Purchase Option in all of the 2018 Leases:

2.10.1 Option Closing Date. On the Business Day immediately preceding the Termination Date, other than due to a termination resulting from an Event of Default by Tenant (the "**Option Closing Date**"), Tenant may exercise its Purchase Option to purchase all, but not less than all, of the Leased Property by giving Landlord written notice thereof, along with simultaneous notices exercising its Purchase Option in all of the 2018 Leases, not less than three (3) months nor more than twelve (12) months before the Option Closing Date. Notwithstanding anything herein to the contrary, in the event of an Event of Default by Landlord in accordance with Section 12.3 herein, Tenant may exercise its Purchase Option, along with exercising its Purchase Option in all of the 2018 Leases within sixty (60) days after the date of such Event of Default by Landlord, and the Option Closing Date shall be deemed to be the date that Tenant actually consummates the purchase of all of the Leased Property specified in the 2018 Leases.

2.10.2 Option Purchase Price. The purchase price for the Leased Property (the "**Purchase Price**") shall be payable in cash by Tenant and shall be equal to the sum of (i) all accrued but unpaid Rent, plus (ii) the Fair Market Value of the Leased Property on the date of Tenant's notice of exercise of its option pursuant to this Section 2.10. If within ten (10) business days of the date of Tenant's notice of exercise of its Purchase Option under this Section 2.10 Landlord and Tenant are unable to agree on the Fair Market Value of the Leased Property, such Fair Market Value shall be established by the appraisal process described on Exhibit J attached hereto. However, if a Facility Mortgage is outstanding, in no event shall the Option Purchase Price be less than the amount necessary to satisfy all amounts due and owing from Landlord to the Facility Mortgagee at the time of closing).

2.10.3 Escrow of Option Closing. Landlord, as seller, and Tenant, as buyer, shall immediately open an escrow to consummate such purchase, along with the simultaneous

purchases pursuant to the Purchase Options in all of the 2018 Leases at a national title company reasonably selected by Landlord on the following terms: (a) the form of such instructions to be then signed by Landlord and Tenant shall be such title company's standard sale escrow instructions without any representations or warranties and without due diligence or other contingencies in favor of the buyer, (b) the Purchase Price shall be payable in full on the Option Closing Date, and Landlord shall have no obligation to provide financing in connection therewith, (c) Tenant shall pay for all expenses of Closing (as such term is defined in Exhibit H attached hereto), including but not limited to the recording costs (including transfer taxes) associated with the warranty deed from Landlord to Tenant (or an affiliate of Tenant) and any costs related to title searches or title insurance premiums. Each party shall bear its own attorney's fees (d) at closing Landlord shall deliver title to the Leased Property via special warranty deed, subject only to those title exceptions shown on Exhibit I to this Lease and any encumbrances added subsequent to the Effective Date with the consent of Landlord and Tenant, as well as any encumbrances arising from any action or omission of the Tenant, (e) the escrow shall close on the Option Closing Date, or as close thereto as is reasonable under the circumstances, and (f) the escrow instructions shall otherwise be in form and substance reasonably satisfactory to Landlord and Tenant. If Tenant fails to close the escrow after exercising its option to purchase the Leased Property for any reason other than a breach by Landlord, then Landlord shall have the right to extend the Term for up to one (1) additional year, at 110% of the Minimum Rent paid in the year prior to the Option Closing Date.

2.10.4 Notice of Involuntary Transfer. Upon notice to Landlord of any proposed or threatened foreclosure, tax sale or any other involuntary transfer of its fee simple interest in any portion of the Leased Property or any involuntary transfer of any equity or membership interest in Landlord or its successors or assigns to a Third Party (an "Involuntary Transfer"), Landlord shall immediately provide and deliver written notice to Tenant of same. At such time, Tenant shall have an option, which must be exercised and, if exercised, closed, prior to the foreclosure or other involuntary transfer in question, to purchase all of the Leased Property which is associated with the 2018 Leases for a Purchase Price equal to the amount necessary to satisfy all amounts due and owing from Landlord to the Facility Mortgagee at the time of closing (the "Involuntary Transfer Purchase Option"). The foregoing shall not be deemed to allow Tenant any right to delay or otherwise interfere with any Involuntary Transfer, including any interference which could delay any foreclosure, tax sale or any other involuntary transfer which has been commenced in accordance with the terms of the Facility Mortgage or any applicable statutes governing foreclosures and/or tax sales. Notwithstanding the above, if Tenant has exercised its Transfer Purchase Option and is diligently pursuing the closing associated therewith, such actions shall not be deemed a delay or interference as such terms are used in the previous sentence. If Tenant exercises such Involuntary Transfer Purchase Option, the closing thereunder shall proceed according to the terms of Section 2.10.3, but such closing must be consummated prior to the foreclosure or other involuntary transfer in question.

### ARTICLE 3

#### RENT

3.1 Rent. Tenant shall pay, in lawful money of the United States of America which shall be legal tender for the payment of public and private debts, without offset, abatement, demand or deduction (unless otherwise expressly provided in this Lease), Rent, together with all



applicable sales, use, franchise and/or excise tax thereon now or hereafter applied to rental receipts by the State specifically attributable to the Land or Improvements or the Rent thereon, (but expressly excluding all federal income taxes, other taxes on income or net worth, estate, succession, inheritance, value added or transfer taxes of Landlord or similar taxes or charges or substitutes therefor and all taxes paid by Tenant directly to the applicable taxing authority) to Landlord during the Term at the address to which Notices to Landlord are to be given or to such other party or to such other address as Landlord may designate from time to time by written notice to Tenant. All payments to Landlord shall be made by wire transfer of immediately available federal funds or by other means acceptable to Landlord in its sole discretion and all such payments shall, upon receipt by Landlord, be and remain the sole and absolute property of Landlord. If Landlord shall at any time accept any such Rent or other sums after the same shall become due and payable, or any partial payment of Rent, such acceptance shall not excuse a delay upon subsequent occasions, or constitute or be construed as a waiver of any of Landlord's rights hereunder. All Rent payments and other payments from Tenant to Landlord hereunder shall be deposited by Tenant into, and disbursed from, such accounts as are specified in, and subject to the provisions of, a "**Deposit Account Control Agreement**" in substantially the form of that attached hereto as **Exhibit F**. Tenant and Landlord may not make modifications to such Deposit Account Control Agreement, including changing the agent appointed to receive such Rents and other payments, without the prior written consent of Landlord, Tenant, and any Mortgagee.

3.2 **Minimum Rent.** Tenant shall pay to Landlord annual base minimum rent ("**Minimum Rent**") of One Dollar (\$1) per year from the Effective Date until the Certification Date for the Facility, which shall increase, beginning on the Certification Date, to an amount equal to the annual debt service (principal and interest) payable by Landlord with respect to the Facility Mortgage, with the original principal balance of the Facility Mortgage being equal to the documented cost of Landlord for the development of the Facility, including land acquisition, site preparation and improvements, costs of construction (including capitalized construction period interest and expenses), development fees, expenses related to the acquisition and financing, and Initial Landlord P&E, as verified by Tenant, such verification not to be unreasonably withheld or delayed. Such Minimum Rent, together with all applicable taxes thereon now or hereafter applied to rental receipts, if any, (subject to the provisions of **Section 3.1** above), shall be paid in equal monthly installments in advance.

3.3 **Additional Charges.** In addition to the Minimum Rent payable hereunder, Tenant shall pay to the appropriate parties and discharge as and when due and payable hereunder the following (collectively the "**Additional Charges**"):

3.3.1 **Taxes and Assessments.** Tenant shall pay or cause to be paid all taxes and assessments required to be paid pursuant to **Article 8**.

3.3.2 **Utility Charges.** Tenant shall be liable for and shall promptly pay directly to the utility company all deposits, charges and fees (together with any applicable taxes or assessments thereon) when due for water, gas, electricity, air conditioning, heat, septic, sewer, refuse collection, telephone and any other utility charges, impact fees, or similar items in connection with the use or occupancy of the Leased Property. Landlord shall not be responsible or liable in any way whatsoever for the quality, quantity, impairment, interruption, stoppage, or other interference with any utility service, including, without limitation, water, air conditioning,

heat, gas, electric current for light and power, telephone, or any other utility service provided to or serving the Leased Property. No interruption, termination or cessation of utility services shall relieve Tenant of its duties and obligations pursuant to this Lease, including, without limitation, its obligation to pay all Rent as and when the same shall be due hereunder.

3.3.3 Insurance Premiums. Tenant shall pay or cause to be paid all premiums for the insurance coverage required to be maintained by Tenant pursuant to Article 9.

3.3.4 Licenses and Permits. Except as otherwise provided in this Lease, Tenant shall pay or cause to be paid all fees, dues and charges of any kind which are necessary in order to acquire and keep in effect and good standing all Permits required for operation of the Leased Property in accordance with the terms of Article 4. Tenant shall maintain, in Tenant's name (to the extent permitted under Applicable Laws), those Permits related to the operation of the Leased Property. Notwithstanding the foregoing, in the event of the expiration or earlier termination of this Lease, Tenant shall assign, transfer or otherwise convey all Permits maintained in Tenant's name to Landlord or Landlord's designee, to the extent not prohibited by Applicable Laws.

3.3.5 Sales Tax. Each Fiscal Quarter, Tenant shall reimburse Landlord for the amount of any applicable sales, use, excise or similar or other tax paid by Landlord on any Rent and any payments to the Reserve, if any, whether the same be now or hereafter levied, imposed or assessed by the State or any Governmental Agencies, but specifically excluding any federal, state or local income taxes, franchise taxes, taxes on net worth, capital, estate, succession, inheritance, value added or transfer taxes of Landlord or similar tax or charge or substitutes therefor and any other taxes imposed on Landlord's income. Each Fiscal Quarter, Landlord shall provide Tenant with detailed information and accounting regarding the calculation and payment of such tax, and Tenant shall reimburse Landlord for such actual amounts paid by Landlord within five (5) Business Days of Landlord's delivery of such information.

3.3.6 Other Charges. Tenant shall pay or cause to be paid all other amounts, liabilities and obligations arising in connection with the Leased Property, including, without limitation, Operating Expenses and any other costs and expenses specifically identified as "Additional Charges" pursuant to this Lease, except those obligations expressly stated not to be an obligation of Tenant pursuant to this Lease.

3.3.7 Penalties and Interest. Tenant shall pay or cause to be paid every fine, penalty, interest and cost, that Tenant is responsible for in accordance with the terms of this Lease, which may be added for non-payment or late payment of the items referenced in this Section 3.3. Tenant shall prepare and file at its expense, to the extent required or permitted by Applicable Laws, all tax returns and other reports in respect of any Additional Charge as may be required by Governmental Agencies. Notwithstanding the foregoing provisions of this Section 3.3, with respect to any Additional Charge accruing prior to the Effective Date and payable on or after the Effective Date for which Landlord has received a credit from the Seller at Closing, Landlord shall either pay such credited amount when due to the applicable parties or deliver such credited amount to Tenant in which event Tenant shall pay such credited amount to the applicable parties when due.

3.3.8 Reserve Payments. Tenant shall pay or cause to be paid all amounts required to be placed into the Reserve pursuant to Section 3.3 of the Omnibus Agreement.

3.3.9 Asset Management Fee. Tenant shall pay or cause to be paid to Landlord, an “**Asset Management Fee**” equal to one-half of one percent (0.5%) of the original principal balance of the Facility Mortgage, per year beginning on the Certification Date. Such fee shall be paid in equal monthly installments in advance.

3.4 Landlord Advances. Except as specifically provided otherwise in this Lease, and subject to Tenant’s right to contest taxes affecting the Leased Property pursuant to, and in accordance with, Section 8.2 hereof, if Tenant does not pay or discharge all Additional Charges prior to delinquency, and provide proof of payment if requested by Landlord, Landlord shall have the right but not the obligation to pay such Additional Charges on behalf of Tenant. If Landlord shall make any such expenditure for which Tenant is responsible or liable under this Lease, or if Tenant shall become obligated to Landlord under this Lease for any other sum besides Minimum Rent as hereinabove provided, the amount thereof shall be deemed to constitute an “**Additional Charge**” and shall be due and payable by Tenant to Landlord, together with interest at the Overdue Rate and all applicable sales or other taxes thereon, but only to the extent Tenant did not pay such Additional Charge by the delinquency date, if any, simultaneously with the next succeeding monthly installment of Minimum Rent or at such other time as may be expressly provided in this Lease for the payment of the same.

3.5 Late Payment of Rent. If Tenant fails to make any payment of Rent on or before the seventh (7th) Business Day after the same becomes due, Tenant shall pay to Landlord an administrative late charge of three percent (3%) of the amount of such payment. In addition, such past due payment shall bear interest at the Overdue Rate from the date first due until paid. Such late charge and interest shall constitute an Additional Charge and shall be due and payable with the next installment of Rent due hereunder.

3.6 Net Lease. Landlord and Tenant acknowledge and agree that both parties intend that this Lease shall be and constitute what is generally referred to in the real estate industry as a “triple net” or “absolute net” lease, such that, except as otherwise expressly set forth herein, Tenant shall be obligated hereunder to pay all costs and expenses incurred with respect to, and associated with, the Leased Property and all personal property thereon and therein and the business operated thereon and therein, including, without limitation, all rent and other charges due and payable under any ground lease or sublease encumbering the Land, all taxes and assessments, utility charges, insurance costs, maintenance costs and routine and customary repair, replacement and restoration expenses (all as more particularly herein provided), together with any and all other assessments, charges, costs and expenses of any kind or nature whatsoever related to, or associated with, the Leased Property, the use, occupation or operation thereof, and the Business operated thereon and therein, other than Landlord’s financing costs and expenses and related debt service; provided, however, that Landlord shall nonetheless be obligated to pay Landlord’s federal, state and local income taxes, other taxes on income or net worth, franchise taxes, margin taxes, capital, estate, succession, inheritance, value added or transfer taxes of Landlord or similar taxes or charges or substitutes therefor with respect to the Rent and other amounts received by Landlord under this Lease. Except as expressly provided in this Lease, Landlord shall bear no cost or expense of any type or nature with respect to, or associated with, the Leased Property, or the use, occupation or operation thereof. Except to the extent otherwise expressly provided in this Lease, it is agreed and intended that Rent payable hereunder by Tenant shall be paid without notice, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction and that Tenant’s obligation to pay

Rent throughout the Term is absolute and unconditional and the respective obligations and liabilities of Tenant and Landlord hereunder shall in no way be released, discharged or otherwise affected for any reason, including without limitation: (a) any defect in the condition, merchantability, design, quality or fitness for use of the Leased Property or any part thereof, or the failure of the Leased Property to comply with Applicable Laws, including any inability to occupy or use the Leased Property by reason of such non-compliance; (b) any damage to, removal, abandonment, salvage, loss, theft, scrapping or destruction of or any requisition of the Leased Property or any part thereof, or any environmental condition on the Leased Property or any property in the vicinity of the Leased Property; (c) any restriction, prevention or curtailment of or interference with any use of the Leased Property or any part thereof, including eviction; (d) any defect in title to or rights to the Leased Property or any Lien on such title or rights to the Leased Property, except for a defect or Lien incurred or attached to the Leased Property in conjunction with any act or omission of Landlord; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by any Person; (f) unless otherwise adjudicated by a court of competent jurisdiction, any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Tenant or any other Person or any action taken with respect to this Lease by any trustee or receiver of Tenant or any other Person or by any court, in any such proceedings; (g) any right or claim that Tenant has or might have against any Person, including, without limitation, Landlord or any vendor, manufacturer or contractor of or for the Leased Property (other than a claim resulting from any willful misconduct or gross negligence of Landlord); (h) subject to Section 12.3 hereof, any failure on the part of Landlord or any other Person to perform or comply with any of the terms of this Lease, or of any other agreement (except as otherwise set forth in this Lease); (i) the impossibility of performance by Tenant or Landlord, or both; (j) any action by any court, administrative agency or other Government Agencies, unless such action voids or otherwise deems this Lease unenforceable in accordance with its terms, in whole or in part; (but if such action voids or otherwise deems this Lease unenforceable in part only, then the foregoing exception shall only apply as it relates to such voided or unenforceable part); (k) any interference, interruption or cessation in the use, possession or quiet enjoyment of the Leased Property or otherwise, unless otherwise set forth in this Lease; or (l) any other occurrence whatsoever whether similar or dissimilar to the foregoing, whether foreseeable or unforeseeable, and whether or not Tenant shall have notice or knowledge of any of the foregoing. Except as specifically set forth in this Lease, this Lease shall be non-cancelable by Tenant for any reason whatsoever and, except as expressly provided in this Lease Tenant, to the extent now or hereafter permitted by Applicable Laws, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease or to any diminution, abatement or reduction of Rent payable hereunder. Except as specifically set forth in this Lease, under no circumstances or conditions shall Landlord be expected or required to make any payment of any kind hereunder or have any obligations with respect to the use, possession, control, maintenance, alteration, rebuilding, replacing, repair, restoration or operation of all or any part of the Leased Property, so long as the Leased Property or any part thereof is subject to this Lease, and Tenant expressly waives the right to perform any such action at the expense of Landlord pursuant to Applicable Laws.

3.7 No Abatement of Rent. Except as otherwise specifically set forth in this Lease, no abatement, diminution or reduction (a) of Rent, charges or other compensation, or (b) of Tenant's other obligations hereunder shall be allowed to Tenant or any Person claiming under Tenant, under any circumstances or for any reason whatsoever and to the maximum extent

permitted by Applicable Laws, Tenant hereby waives the application of any local or state statutes, land rules, regulations or ordinance providing to the contrary.

3.8 Lockbox. Within one hundred twenty (120) days of the date hereof, all Gross Revenues shall be deposited by Tenant into, and disbursed from, such accounts as are specified in, and subject to the provisions of, a Deposit Account Control Agreement, whereby Tenant irrevocably authorizes the agent specified in the Deposit Account Control Agreement to comply with the terms of this Lease. Tenant and Landlord may not make modifications to such Deposit Account Control Agreement, including changing the agent appointed to receive such Gross Revenues without the prior written consent of Landlord, Tenant, and any Mortgagee.

3.9 Security Agreement. Tenant hereby grants to Landlord a security interest in (a) the Reserve, (b) the 2018 Reserve provided at Section 3.3 of the Omnibus Agreement, (c) all cash, money, financial assets, and other property now or at any time hereafter held therein, all shares of stock, securities, instruments, bonds, mutual funds, investment property, financial assets and other assets, of every kind, character, and description now owned or hereafter acquired by Tenant and held therein, together with all options, privileges and other rights, contractual or otherwise, with respect thereto, and all dividends, cash, instruments and other property, including, without limitation, additional shares of stock, securities, bonds, mutual funds, notes, and other assets from time to time received, receivable, or otherwise distributed in respect of or in exchange for any or all of the foregoing, but specifically excluding the Purchase Money Note, (d) all replacements or substitutions of such financial assets and other property, and proceeds of the sale or other disposition of, any of the foregoing, including without limitation, cash proceeds, and (e) all proceeds of any and all of the foregoing, in each case, whether now owned or hereafter acquired, as security for Tenant's obligations to Landlord hereunder and agrees that, in addition to all other rights and remedies available to Landlord pursuant to the terms of this Lease, Landlord shall have all rights of a secured party under applicable law with respect to such assets and proceeds. Tenant agrees to execute and deliver all such instruments as reasonably approved by Tenant that may be reasonably required by Landlord to evidence and/or perfect these security interests. At Landlord's expense, Landlord may file at the state and county Uniform Commercial Code filing offices any financing statement or other instrument needed to evidence and/or perfect these security interests. Tenant hereby grants to Landlord a power of attorney specifically limited to Landlord's execution and filing of any financing statement needed to evidence and/or perfect Landlord's aforesaid security interest, which power is coupled with an interest and is irrevocable during the Term. Tenant acknowledges and agrees that Landlord may collaterally assign such security interest to a Mortgagee that may, in turn, further collaterally assign such security interest.

## ARTICLE 4

### USE OF THE LEASED PROPERTY

#### 4.1 Permitted Use.

4.1.1 Permitted Use. Tenant covenants and agrees that it shall, throughout the Term, less and except during the continuation of a casualty, condemnation or Force Majeure Event, continuously use and occupy the Leased Property solely for operation of the Business, and for such other uses as may be necessary or incidental to such use, and for no other purpose

without interruption (the foregoing being referred to as the “**Permitted Use**”). Without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed, no Affiliate of Tenant (other than those listed on Schedule 4.1.1) may be a subtenant or concessionaire in the Leased Property. No use shall be made or permitted to be made of the Leased Property which will cause the cancellation of any insurance policy covering the Leased Property or any part thereof, nor shall Tenant sell or otherwise provide or permit to be kept, used or sold in or about the Leased Property any article which may be prohibited by law or by the standard form of fire insurance policies, or any other insurance policies required to be carried hereunder, or fire underwriter’s regulations. Tenant shall, at its sole cost, comply with all Insurance Requirements. Tenant shall not negligently or willfully take or omit to take any action, the taking or omission of which materially impairs the value or the usefulness of the Leased Property or any part thereof for its Permitted Use.

4.1.2 Necessary Approvals. Tenant shall at all times during the Term and in accordance with the terms of this Lease maintain, in good standing, all Permits and approvals necessary to use and operate, for its Permitted Use, the Leased Property and the Business operated thereon under Applicable Laws, and shall provide to Landlord, upon Landlord’s reasonable request, a copy of any documents or information pertaining to said Permits and approvals readily available to Tenant. Landlord shall, at no cost or liability to Landlord, reasonably cooperate with Tenant in this regard.

4.1.3 Lawful Use, Etc. Tenant shall not use or suffer or permit the use of the Leased Property or Tenant’s Personal Property, if any, for any unlawful purpose. Tenant shall not commit or suffer to be committed any waste on the Leased Property nor shall Tenant cause or permit any unlawful nuisance thereon or therein. Tenant shall not suffer nor permit the Leased Property, or any portion thereof, to be used in such a manner as (i) would reasonably be expected to impair Landlord’s title thereto or to any portion thereof, (ii) would reasonably be expected to allow a claim or claims for adverse usage or adverse possession by the public, as such, or of implied dedication of the Leased Property or any portion thereof, or (iii) would reasonably be expected to result in a material, negative change in its quality or condition.

4.1.4 Compliance with Legal Requirements. Tenant shall at all times, at its sole cost and expense, keep, maintain and operate the Leased Property in compliance with all Legal Requirements; provided that the cost or expense of any improvement, alteration, repair or addition required under any Legal Requirement or necessary for compliance with any Applicable Law may be paid for using funds from the Reserve and otherwise in accordance with Article 3 of the Omnibus Agreement. Tenant agrees to give Landlord Notice of any written notices, orders or other communications relating to Legal Requirements affecting the Leased Property which is or are enacted, passed, promulgated, made, issued or adopted, a copy of which is served upon, or received by, Tenant, or a copy of which is posted on or fastened or attached to the Leased Property, within five (5) Business Days after service, receipt, posting, fastening or attaching. At the same time, Tenant will inform Landlord as to the work or steps which Tenant proposes to do or take in order to comply therewith. Tenant shall manage the use of all Hazardous Substances stored at, or used in connection with, the Leased Property and Business in accordance with all applicable Environmental Laws.

#### 4.2 Environmental Matters.

4.2.1 Except in accordance with Applicable Laws, Tenant shall at all times during the Term keep the Leased Property free of Hazardous Substances, except for such items which may typically be collected, stored and utilized (in reasonable quantities) at facilities such as the Business in the ordinary course of business and insofar as Tenant collects, stores, and utilizes such Hazardous Substances in accordance with all Applicable Laws. Neither Tenant nor any of its employees, agents, invitees, licensees, contractors, guests, or subtenants (if permitted) shall use, generate, manufacture, refine, treat, process, produce, store, deposit, handle, transport, Release (as defined below), or dispose of Hazardous Substances in, on, at, under, from or about the Leased Property, in violation of any Applicable Law(s). Tenant shall give Landlord prompt Notice of any claim received by Tenant from any person, entity, or applicable Governmental Agencies that a Release or disposal of Hazardous Substances has occurred or otherwise been identified on the Leased Property or the Environment thereof, but only to the extent caused by Tenant, and shall strictly comply with and correct, at Tenant's sole cost and expense, any and all violations of Applicable Law(s) to the written satisfaction of the applicable Governmental Agencies and Landlord. Upon request of Landlord, Tenant shall provide Landlord with a copy of any and all written correspondence between any such applicable Governmental Agency and Tenant. Under this Section 4.2, the term "**Release**" shall mean any potential or actual presence in, on, at, under, from, or the spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment of any Hazardous Substance(s) by Tenant. Tenant shall not knowingly or intentionally discharge or permit to be discharged into any septic facility or sanitary sewer system serving the Leased Property any Hazardous Substance(s), toxic or hazardous sewage or waste other than that which is permitted by Applicable Laws or which is normal domestic waste water for the type of business contemplated by this Lease to be conducted by Tenant on, in, at or from the Leased Property. Any Hazardous Substance(s) toxic or hazardous sewage or waste which is produced or generated in connection with the use or operation of the Leased Property shall be handled and disposed of as required by and in strict compliance with all Applicable Law(s), or shall be pretreated to the level of domestic wastewater, as specified by Applicable Law(s), prior to discharge into any septic facility or sanitary sewer system serving the Leased Property.

4.3 Continuous Operations. Tenant shall continuously operate the Leased Property in the manner required hereunder. Other than the Management Agreement, Tenant shall not enter into any management agreement with respect to the Leased Property unless such management agreement is approved in writing by Landlord and any Mortgagee, in Landlord's and such Mortgagee's sole and absolute discretion, and any such management agreement shall be expressly subordinate to the interests of Landlord and the holder of any Facility Mortgage, and the payment of any management fees thereunder shall be expressly subordinate to payment of Rent under this Lease. Any such management agreement, including without limitation the Management Agreement, must provide that such management agreement is subordinate and junior-in-interest to all of Landlord's interests in the Leased Property, all of Tenant's interests in the Leased Property, and any financing obtained by Landlord which is secured by any or all of Landlord's interest in the Leased Property or this Lease.

4.4 Compliance With Restrictions, Etc. Tenant, at its sole cost and expense, shall comply in all respects with all Permitted Encumbrances affecting the Leased Property and Tenant shall comply with and perform all of the obligations set forth under the same to the extent that the same are applicable to the Leased Property; provided, however, the foregoing shall not require Tenant to perform any of Landlord's obligations under any Permitted Encumbrance

relating to a Facility Mortgage or any other financing incurred by Landlord. Further, in addition to Tenant's payment obligations under this Lease, Tenant shall pay all sums charged, levied or assessed under any Permitted Encumbrances (other than any encumbrances relating to a Facility Mortgage or any other financing or obligation incurred by or on behalf of Landlord) promptly as the same become due and shall, upon receipt of written request by Landlord, promptly furnish Landlord evidence of payment thereof.

## **ARTICLE 5**

### **MAINTENANCE AND REPAIRS**

#### **5.1     Tenant's Obligations.**

5.1.1 Tenant shall, at its sole cost and expense, keep the Leased Property in good working order and repair, reasonable wear and tear excepted, and shall promptly make all repairs and maintenance replacements thereto (including capital improvements and major repairs) as may be necessary to maintain the standard of operation for the Business as set forth herein, including but not limited to upgrades or improvements to the Leased Property that have the effect of reasonably maintaining or improving its competitive position in its respective marketplace or maintaining its compliance with all Governmental Agencies and other applicable regulatory bodies. Such items shall include, but not be limited to, repairs or replacements of the roof, structural elements of the walls, parking area or the electrical, plumbing, HVAC or other mechanical or structural systems, new or replacement wallpaper and painting, landscaping, tiles and carpeting, window coverings, lighting fixtures, furnishings and moveable equipment and appliances. All repairs shall be made in a good, workmanlike manner, consistent with the standards generally employed by owners and operators of facilities comparable to the Facility, as may be improved from time to time, in accordance with all applicable federal, state and local statutes, ordinances, by laws, codes, rules and regulations relating to any such work.

5.1.2 Tenant shall also, at its sole cost and expense, put, keep, replace and maintain Tenant's Personal Property and any of the Initial Landlord P&E (but excluding all intangible personal property of Tenant) in good repair and in good, safe and substantial order, reasonable wear and tear excepted, howsoever the necessity or desirability for repairs may occur, and whether or not necessitated by wear, tear, obsolescence or defects. Tenant may at any time and from time to time remove and dispose of any of Tenant's Personal Property which is either (i) obsolete or unfit for use or which is no longer useful in the operation of the Business or (ii) not reasonably required for the operation of the Business as required herein.

5.1.3 In addition to the foregoing, Tenant shall, at its sole cost and expense, comply with and perform any maintenance obligations and/or requirements set forth in any and all applicable agreements or permits concerning storm water control or drainage procedures and any agreements or permits applicable to any rights in or to navigable waters associated with or related to the Leased Property or the operation thereof.

5.1.4 Insofar as it is permitted under Section 3.3 of the Omnibus Agreement hereof, Tenant shall be allowed to utilize the funds in the Reserve described below for any obligation set forth above related to repairs, replacements and/or maintenance.

#### **5.2     Intentionally Omitted.**



5.3 Landlord Funding. If Landlord provides a portion of Landlord's Additional Investment, to fund the costs of construction, renovation and/or refurbishment, as applicable, with respect to the Leased Property (an "Improvement Project"), Landlord and Tenant acknowledge and agree that (a) all amounts funded by Landlord in connection with such Improvement Project shall be deemed and treated as Landlord's Additional Investment and shall be added to and become part of the Adjusted Lease Basis, (b) all amounts disbursed by Landlord in connection with such Improvement Project shall be used by Tenant solely in connection with the Permitted Renovations to the Leased Property approved in writing by Landlord in connection with such Improvement Project, (c) the terms, conditions, rights and obligations of Tenant and Landlord, as applicable, set forth in this Section 5.3 shall be complied with in all respects by Tenant and Landlord, as applicable, with respect to such Improvement Project, and (d) all improvements and personal property acquired in connection with such Improvement Project shall be the property of Landlord and shall be part of the Leased Property hereunder. For these purposes, the parties acknowledge that the Minimum Rent set forth in Section 3.2 of the Lease has been calculated based solely on the Landlord's Original Investment, and when increasing the Adjusted Lease Basis to take into account the amount of any Landlord's Additional Investment related to the cost of any Improvement Project, beginning with the month after the Improvement Project is placed into service there shall be an increase in Minimum Rent by an amount equal to the actual monthly interest costs incurred by Landlord from an unrelated third party lender regarding the Landlord's Additional Investment.

## ARTICLE 6

### IMPROVEMENTS, ETC.

6.1 Prohibition. Except for Minor Alterations as hereinafter expressly provided in Section 6.2, and except as otherwise required due to normal wear and tear, no portion of the Leased Property shall be demolished, removed or altered by Tenant in any manner whatsoever without the prior written consent and approval of Landlord. Tenant shall be entitled and obligated to undertake all alterations to the Leased Property required by any Legal Requirements and, in such event, Tenant shall comply with the provisions of Section 6.2 below.

6.2 Permitted Renovations. The activities permitted pursuant to Section 6.2.1 and Section 6.2.2 below shall collectively constitute "Permitted Renovations."

6.2.1 Minor Alterations. Landlord acknowledges that certain minor alterations and renovations to the Leased Improvements may be undertaken by Tenant from time to time ("Minor Alterations"). Landlord hereby agrees that Tenant shall be entitled to perform such Minor Alterations on or about the Leased Improvements without the prior approval of Landlord; provided, however, that the collective cost of all Minor Alterations shall not exceed Ten Thousand and No/100 Dollars (\$10,000.00) per Lease Year, and the same shall not weaken or impair the structural strength of any buildings or other structural improvements which constitute part of the Leased Improvements, or materially alter their design or appearance (including, but not limited to, a reduction in the number of units), materially impair the use of any of the service facilities located on the Leased Property, or fundamentally affect in any detrimental manner the character or suitability of, the Leased Improvements for the Permitted Use above, or materially lessen or impair the value thereof. If Tenant elects to perform any Minor Alterations, the cost thereof shall be borne by Tenant and accounted for in accordance with GAAP.

6.2.2 Additions, Expansions and Structural Alterations. All alterations, additions, expansions and renovations to the Leased Improvements which do not qualify as Minor Alterations shall constitute "**Major Alterations**." Except as expressly permitted in Section 6.1 and Section 6.2.1 above, nothing in this Article 6 or elsewhere in this Lease shall be deemed to authorize Tenant to perform any Major Alterations; it being understood that Tenant may do so only with the prior written consent and approval of Landlord, which consent and approval may be withheld by Landlord in its sole and absolute discretion and may be conditioned upon the payment by Tenant to Landlord of all reasonable costs incurred by Landlord in evaluating the same, providing additional insurance and such other conditions as Landlord may impose. If Tenant elects to perform any Major Alterations, the cost thereof shall be borne by Tenant.

6.3 Conditions to Reserve Expenditures and Permitted Renovations. In connection with any Reserve Expenditures Permitted Renovations pursuant to the Approved Reserve Budget, Tenant shall satisfy the following conditions:

(a) Except in the case of Minor Alterations, before the commencement of any Permitted Renovations deemed to require plans and specifications by Applicable Law, such plans and specifications therefor or a detailed itemization thereof prepared by a licensed architect reasonably approved by Landlord, or other design professional appropriate under the circumstances reasonably approved by Landlord shall be furnished to Landlord for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Such approval shall not constitute Landlord's agreement that such plans and specifications are in compliance with Applicable Laws or an assumption by Landlord of any liability in connection with the Permitted Renovations contemplated thereby. In the case of Minor Alterations, to the extent applicable, Tenant shall furnish to Landlord a complete set of plans and specifications therefore or a detailed itemization thereof for its records.

(b) To the extent required by any Legal Requirements and Applicable Laws, before the commencement of any such work, Tenant shall obtain the approval thereof by all Governmental Agencies having or claiming jurisdiction of or over the Leased Property, and with any public utility companies having an interest therein. In connection with any such work Tenant shall comply with all Legal Requirements and Applicable Laws, of all other Governmental Agencies having or claiming jurisdiction of or over the Leased Property and of all their respective departments, bureaus and offices, and with the requirements, if any, of such public utilities, of the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction, or any other body exercising similar functions, and of all insurance companies then writing policies covering the Leased Property or any part thereof.

(c) Tenant represents and warrants to Landlord that all such work will be performed in a good and workmanlike manner and in accordance with the plans and specifications required under this Section 6.3 therefor, the terms, provisions and conditions of this Lease and all applicable governmental requirements.

(d) Landlord, at its sole cost and expenses and upon not less than twenty-four (24) hours' Notice to Tenant, shall have the right to inspect any such work at all times during normal working hours using such inspector(s) as it may deem necessary so



## State of Tennessee

### Health Services and Development Agency

Andrew Jackson, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda)

Phone: 615-741-2364

Fax: 615-741-9884

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December 1, 2017

Mr. Michael Brent, Esq.  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203

RE: Certificate of Need Application – Open Arms Care Corporation SW Dexter Road - CN1711-034

The relocation of an 8 licensed bed ICF/IID home from 5350 Benjestown Road, Memphis (Shelby County), TN to an unaddressed site located on an 8.2 acre parcel located on the southwest corner of the intersection of Dexter Road and Dexter Lane, Cordova, (Shelby County), TN 38002. The proposed site is the south half of the parcel described as Parcel 096507 00307C in the records of the Shelby County Tax Assessor. The service area consists of Shelby County. The applicant is owned by Open Arms Care Corporation. The estimated project cost is \$5,130,000.

Dear Mr. Brent:

This is to acknowledge the receipt of supplemental information to your application for a Certificate of Need. Please be advised that your application is now considered to be complete by this office.

Your application is being forwarded to Theresa C. Sloan at the Tennessee Department of Intellectual and Developmental Disabilities for Certificate of Need review by the Office of General Counsel. You may be contacted by Ms. Sloan or someone from her office for additional clarification while the application is under review by the Department. Ms. Sloan's contact information is [Teresa.C.Sloan@tn.gov](mailto:Teresa.C.Sloan@tn.gov) or 615-253-8731.

In accordance with Tennessee Code Annotated, §68-11-1601, et seq., as amended by Public Chapter 780, the 30-day review cycle for **CONSENT CALENDAR** for this project will begin on December 1, 2017. The first (30) days of the cycle are assigned to the Department of Intellectual and Developmental Disabilities, during which time a public hearing may be held on your application. You will be contacted by a representative from this Agency to establish the date, time and place of the hearing should one be requested. At the end of the 30-day period, a written report from the Department of Intellectual and Developmental Disabilities or its representative will be forwarded to this office for Agency review. You will receive a copy of their findings. The Health Services and Development Agency will review your application on February 28, 2018.

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- (3) No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
- (4) All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have questions or require additional information, please contact me.

Sincerely,



Melanie M. Hill  
Executive Director

cc: Theresa Sloan, Assistant Commissioner and General Counsel  
Intellectual and Developmental Disabilities



**State of Tennessee**  
**Health Services and Development Agency**

Andrew Jackson Building, 9<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda)

Phone: 615-741-2364

Fax: 615-741-9884

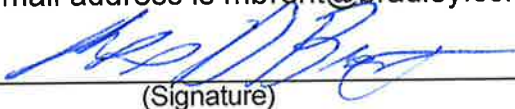
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## LETTER OF INTENT

The Publication of Intent is to be published in The Commercial Appeal, which is a newspaper of general circulation in Shelby County, Tennessee, on or before November 10, 2017, for one day.

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 et seq., and the Rules of the Health Services and Development Agency, that Open Arms Care Corporation, a Georgia non-profit corporation qualified to do business in Tennessee, intends to file an application for a Certificate of Need for the replacement and relocation of an eight-person Intermediate Care Facility for Individuals with Intellectual Disabilities ("ICF/IID"), managed by Integra Resources, LLC, a Tennessee limited liability company. The facility is currently located at 5350 Benjestown Road, Memphis (Shelby County), Tennessee 38127, and will be relocated to a lot of approximately 4.1 acres, which does not currently have a separate street address, such lot being the south half of the approximately 8.2 acre parcel located on the southwest corner of the intersection of Dexter Road and Dexter Lane, in Shelby County, Tennessee, and also described as Parcel 096507 00307C in the records of the Shelby County Tax Assessor. Access to the south half described above is anticipated to be from Old Dexter Road. The estimated project cost is \$5,130,000.00.

The anticipated filing date of the application is on or before November 15, 2017. The contact person for this project is Michael D. Brent, Esq., who may be reached at Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203. Mr. Brent's telephone number is (615) 252-2361 and his e-mail address is [mbrent@bradley.com](mailto:mbrent@bradley.com).

  
(Signature)

Nov. 9, 2017  
(Date)

[mbrent@bradley.com](mailto:mbrent@bradley.com)  
(E-mail Address)

The Letter of Intent must be filed in triplicate and received between the first and the tenth day of the month. If the last day for filing is a Saturday, Sunday or State Holiday, filing must occur on the preceding business day. File this form at the following address:

Health Services and Development Agency  
Andrew Jackson Building, 9<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, Tennessee 37243

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(c)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

# Supplemental #1

Open Arms Care Corp SW  
Dexter Rd

CN1711-034



# State of Tennessee

## Health Services and Development Agency

Andrew Jackson Building, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda) Phone: 615-741-2364/Fax:615/532-9940

**Supplemental #1**

**November 22, 2017**

**2:32 P.M.**

November 22, 2017

Michael Brent  
Attorney  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203

RE: Certificate of Need Application CN1711-034  
Open Arms Care Corporation SW (Dexter Rd)

Dear Mr. Brent:

This will acknowledge our November 15, 2017 receipt of your application for a Certificate of Need for the relocation of an 8 licensed bed ICF/IID home from 5350 Benjestown Road, Memphis (Shelby County), TN to an unaddressed site located on an 8.2 acre parcel located on the southwest corner of the intersection of Dexter Road and Dexter Lane, Cordova, (Shelby County), TN 38002. The proposed site is the south half of the parcel described as Parcel 096507 00307C in the records of the Shelby County Tax Assessor.

Several items were found which need clarification or additional discussion. Please review the list of questions below and address them as indicated. The questions have been keyed to the application form for your convenience. I should emphasize that an application cannot be deemed complete and the review cycle begun until all questions have been answered and furnished to this office.

**Please submit responses in triplicate by 12:00 noon, Tuesday November 28, 2017.** If the supplemental information requested in this letter is not submitted by or before this time, then consideration of this application may be delayed into a later review cycle.

---

**1. Section A, Executive Summary, (B) Rationale for Approval (2) Economic Feasibility, Page 5**

The applicant refers to Attachment C. Economic Feasibility-2 as documentation of a commercial loan to finance the land purchase and facility construction. However, the attachment should be listed as "Attachment B-Economic Feasibility B". Please revise and submit a replacement page 5 listing the correct attachment.

**Response:** Please see R-5 in Supplemental Attachment – Replacement Pages for a corrected page 5.

**2. Section A, Project Details, Item 5 Management Agreement, Page 7**



Please provide a brief overview of Integra Resources, Inc. and their experience in managing an ICF/IID home.

**Response:** Integra Resources, LLC ("Integra") manages all of Open Arms' ICF/IID facilities, which were listed in Attachment A – 4 of the application, and is equally owned by SMI Group, LLC and Flatrock Investors, LLC. In turn, SMI Group, LLC is equally owned by George Stevens and Jeff Mastroleo, while Flatrock Investors, LLC is equally owned by Joseph Torrence and Richard Brown. The only relationship between Open Arms and Integra is the parties' existing contractual relationship for management of Open Arms' facilities. Further, Jeff Mastroleo, Joseph Torrence, Richard Brown, and George Stevens do not have ownership interests in, or governance positions with respect to, Open Arms.

George Stevens, Jeff Mastroleo, Joseph Torrence, and Richard Brown have directly applicable experience in areas including healthcare operations, affordable housing operations, financing and management, government service in the areas of mental health and affordable housing, and executive-level management of healthcare providers. More information about Integra's principles is attached as Supplemental Attachment – Integra Principals.

**3. Section A, Project Details, Item 6.B (1) Plot Plan, Page 8**

The plot plan is noted. However, please submit a replacement plot plan that includes the labeling of the location of the proposed duplex and what will be located in the adjoining lot.

**Response:** Please see Supplemental Attachment – Replacement Plot Plan for a plot plan with the requested changes. Please note that the Applicant has no current plans for the north half of the parcel, although it is anticipated that this portion of the 8.2 acre parcel may be sold or developed for other uses in the future.

**4. Section A, Project Details, Item 6.B (2) Floor Plan, Page 9**

The floor plan is noted. However, please provide a floor plan that displays the entire 8 bed duplex.

**Response:** The floor plan attached as Attachment A-6B-2 is correct, as the duplex style home is anticipated to be a mirror image of the provided floor plan, with each half of the duplex style structure being self-sufficient (as to kitchen facilities, etc.). The garage of each half will be side by side and the walk/grill areas in the rear will be connected.

**5. Section B, Need Item C, Page 22**

Please submit a county level map that designates Shelby County as the service area and submit a replacement page 22.

**Response:** Please see R-22 in Supplemental Attachment – Replacement Pages for a county level map showing Shelby County as the service area.

**6. Section B. Need Item F. , Page 24**



It is noted the applicant projects 100% occupancy of all eight beds in Year One and Year Two. However, the occupancy calculates at 99.7% in Year One and 99.2% in Year Two. Please revise and submit a replacement page 24.

**Response:** Please see R-24 in Supplemental Attachment – Replacement Pages for a revised response regarding anticipated occupancy.

**7. Section B, Economic Feasibility, Item C. Historical Data Chart, Page 28**

The applicant refers to the Projected Data Chart in accounting for resident's dietary meals as "supplies" expenses in the "other Expenses" line in item at D.9 in the chart and as "programming Expenses". However, there is not a line "D.9" and no line labeled "Programming Expenses". Please clarify and submit a replacement page 28 if necessary.

**Response:** The reference to the Projected Data Chart was incorrect. Please see R-28 in Supplemental Attachment – Replacement Pages for a revised response indicating that resident dietary meals are accounted for in item D.6 and in the "Miscellaneous" category if one refers to the itemization of that line item following the Projected Data Chart.

Please indicate the type of utilization (cases, patients, days, etc.) data in Line A. in the Historical Data Chart and submit a replacement Attachment page 16.

**Response:** Please see Supplemental Attachment – Replacement Projected Data and Historical Data Charts for a Historical Data Chart indicating that the utilization type is resident bed days. Please also note that the page number was included in error and has been removed.

**8. Section B, Economic Feasibility, Item D. (Projected Data Chart), Page 19**

Rent in the amount of \$244,444 in Year One is noted in the Projected Data Chart. However, the Option to Lease Agreement between FDG, LLC and Open Arms Care Corporation notes the annual rent will not exceed \$168,333 per year. Please clarify.

**Response:** Rent of \$244,444 in Year One is correct as noted in the Projected Data Chart and the language in the Option to Lease Agreement (the "Option") that average rent shall not exceed \$168,333 per year is also correct. This language in the Option refers to the average annual rent over the course of the lease's 30 year term as opposed to a guarantee with respect to any specific year's annual rent amount. The annual rent will be on a declining balance rather than an equal amortization over the 30 year term in order to correspond with FDG's anticipated financing, which will also be a declining balance as opposed to equal amortization.

Please indicate the type of utilization (cases, patients, days, etc.) data in Line A. in the Projected Data Chart and submit a replacement Attachment page 19.

**Response:** Please see Supplemental Attachment – Replacement Projected Data and Historical Data Charts for a Projected Data Chart indicating that the utilization type is

resident bed days. Please also note that the page number was included in error and has been removed.

The management fee of \$74,760 is noted in Year One and Year Two in the Projected Data Chart. However, the management fee in the management agreement reflects \$60,360.00 on page 10. Please clarify.

**Response:** Please see Supplemental Attachment – Replacement Management Agreement for a Management Agreement reflecting \$74,760 as the management fee.

**9. Section B, Economic Feasibility, Item E (1) Average Gross Charge, Average Deduction from Operating Revenue, and Average Net Charge, Page 29**

The chart on the top of page 29 is noted. However, it appears the chart is incorrect. Please use the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Historical Data Chart for the previous year and current year. Please revise and submit a revised page 29 (R-29).

**Response:** Please see R-29 in Supplemental Attachment – Replacement Pages for a revised chart. Please note that, as requested above, the Historical Data Chart was used for the previous year and current year columns, specifically, the revenue and deductions corresponding to the year 2015 and 2016, respectively.

**10. Section B, Economic Feasibility, Item H, Page 31**

The total employees (A + B) of 26.41 appear to be incorrect. Please revise and submit a replacement page 31 (31R).

**Response:** Please see R-31 in Supplemental Attachment – Replacement Pages for a revised chart reflecting a projected 24.41 total employees and 24.8 total staff.

**11. Proof of Publication**

Please submit proof of publication with the application by attaching either the full page of the newspaper in which the notice appeared, with the *mast and dateline intact*, or a publication affidavit from the newspaper that includes a copy of the publication.

**Response:** Please see the proof of publication in Supplemental Attachment – Proof of Publication.

In accordance with Tennessee Code Annotated, §68-11-1607(c) (5), "...If an application is not deemed complete within sixty (60) days after written notification is given to the applicant by the agency staff that the application is deemed incomplete, the application shall be deemed void." **For this application, the sixtieth (60<sup>th</sup>) day after written Notification is Friday, January 20, 2018. If this application is not deemed complete by this date, the application will be deemed void.** Agency Rule 0720-10-.03(4) (d) (2) indicates that "Failure of the applicant to meet this deadline will result in the application being considered withdrawn and returned to the contact person. Resubmittal of the application must be accomplished in accordance with Rule 0720-10-.03 and requires an additional filing fee."

Please note that supplemental information must be submitted timely for the application to be deemed complete prior to the beginning date of the review cycle which the applicant intends to enter, even if that time is less than the sixty (60) days allowed by the statute. The supplemental information must be submitted with the enclosed affidavit, which shall be executed and notarized; please attach the notarized affidavit to the supplemental information.

If all supplemental information is not received and the application officially deemed complete prior to the beginning of the next review cycle, then consideration of the application could be delayed into a later review cycle. The review cycle for each application shall begin on the first day of the month after the application has been deemed complete by the staff of the Health Services and Development Agency.

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- (1) No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
- (2) All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

Phillip M. Earhart  
Health Services Development Examiner

PME  
Enclosure

**Supplemental #1**

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**SHELBY #3**

**Supplemental Attachment – Replacement Pages**

2) Economic Feasibility

**Response:** The facility's estimated cost of construction is shown on the attached exhibits. Please see Section C, Economic Feasibility, for additional information about costs for land, site preparation, and other costs. The project financing will include a commercial loan to the Landlord (please see Attachment B – Economic Feasibility – B) that will be sufficient to purchase the land and construct the new facility.

Because of the Applicant's extensive experience serving individuals with intellectual and developmental disabilities and its solid working relationship with DIDD, the Applicant believes that, in addition to being economically feasible, this project will build upon lessons learned building other ICF/IID homes in recent years, enabling it to continue to better residents' quality of life.

3) Appropriate Quality Standards

**Response:** With almost 30 years of experience providing community-based facilities for individuals with intellectual and developmental disabilities, the Applicant is well-versed in what is required to ensure quality services are provided to residences and that its facilities successfully undergo agency surveys with few to no violations. Further, the Applicant current and shall continue to meet all standards imposed on it by licensing and regulatory boards to which it is subject.

4) Orderly Development to adequate and effective health care

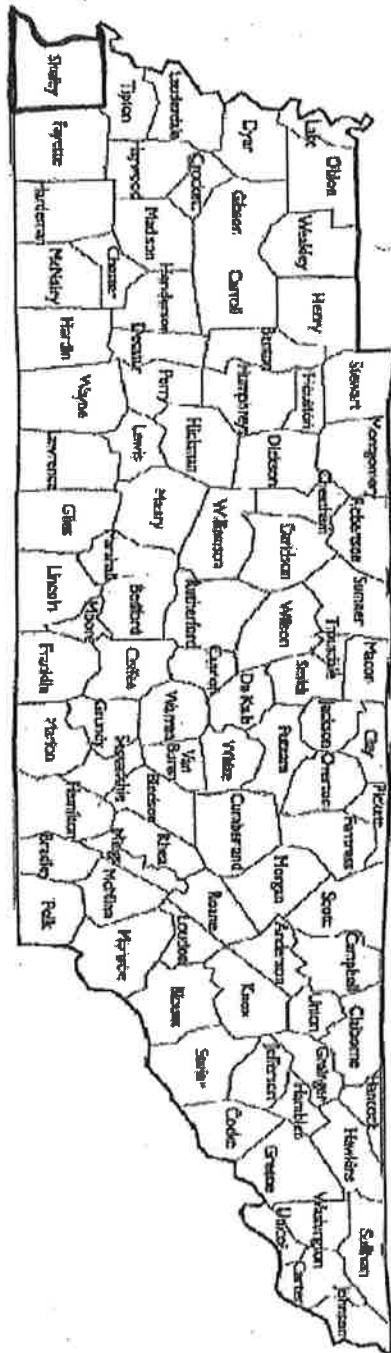
**Response:** The proposed relocation will not result in an unnecessary increase in use of healthcare services as the number of individuals currently served in Shelby County (provided the Applicant remains the sole ICF/IID facility provider) will not change as a result the approval of this Application, as current recipients will just be moved to a new location. Further, approving this Application ensures that residents are receiving care provided in modern setting, in a home constructed with what are likely much more robust disability accessibility requirements, reflecting a deeper understanding of the challenges faced by the disabled and the ways in which homes can be modified in response. The more modern floorplan of the new facility will also assist in meeting the healthcare needs of the residents.

**C. Consent Calendar Justification**

If Consent Calendar is requested, please provide the rationale for an expedited review.

A request for Consent Calendar must be in the form of a written communication to the Agency's Executive Director at the time the application is filed.

**Response:** A letter addressed to the Agency's Executive Director containing the Applicant's request to be added to the Consent Calendar and the justification for an expedited review is attached hereto as Attachment A-3C. To summarize, this Application does not seek to add any ICF/IID beds; rather, it proposes relocating existing ICF/IID beds following construction of a new ICF/IID facility to benefit residents and the community.



County Level Map

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- E. Describe the existing and approved but unimplemented services of similar healthcare providers in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. List each provider and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: Admissions or discharges, patient days, average length of stay, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc. This doesn't apply to projects that are solely relocating a service.

**Response:** Not applicable. As noted above, all existing ICF/IID beds in Shelby County are at full occupancy, and there are no approved-but-unimplemented ICF/IID beds for Shelby County.

- F. Provide applicable utilization and/or occupancy statistics for your institution for each of the past three years and the projected annual utilization for each of the two years following completion of the project. Additionally, provide the details regarding the methodology used to project utilization. The methodology **must include** detailed calculations or documentation from referral sources, and identification of all assumptions.

**Response:** The Applicant projects 99.7% and 99.2% occupancy of the eight beds, or 2,910 and 2,898 resident bed days, respectively, for the first two years of operation of this facility. This is based upon the Applicant's experience and the facility's current occupancy rate, as the Applicant anticipates no change.

## **SECTION B: ECONOMIC FEASIBILITY**

- A. Provide the cost of the project by completing the Project Costs Chart on the following page. Justify the cost of the project.
- 1) All projects should have a project cost of at least \$15,000 (the minimum CON Filing Fee). (See Application Instructions for Filing Fee)
  - 2) The cost of any lease (building, land, and/or equipment) should be based on fair market value or the total amount of the lease payments over the initial term of the lease, whichever is greater. Note: This applies to all equipment leases including by procedure or "per click" arrangements. The methodology used to determine the total lease cost for a "per click" arrangement must include, at a minimum, the projected procedures, the "per click" rate and the term of the lease.
  - 3) The cost for fixed and moveable equipment includes, but is not necessarily limited to, maintenance agreements covering the expected useful life of the equipment; federal, state, and local taxes and other government assessments; and installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding, which should be included under construction costs or incorporated in a facility lease.
  - 4) Complete the Square Footage Chart on page 8 and provide the documentation. Please note the Total Construction Cost reported on line 5 of the Project Cost Chart should equal the Total Construction Cost reported on the Square Footage Chart.
  - 5) For projects that include new construction, modification, and/or renovation — **documentation must be** provided from a licensed architect or construction professional that support the estimated construction costs. Provide a letter that includes the following:
    - a) A general description of the project;
    - b) An estimate of the cost to construct the project;
    - c) A description of the status of the site's suitability for the proposed project; and

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Historical Data Chart represents revenue and expense information for the last three (3) years for which complete data is available. Provide a Chart for the total facility and Chart just for the services being presented in the proposed project, if applicable. **Only complete one chart if it suffices.**

*Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.*

**Response:** Please see Attachment B. Economic Feasibility – C. The Applicant's payment for the ICF/IID services it provides will be reimbursement from TennCare be based on its expenses such that its funding will tend to be equal to its expenses. Therefore, there will be no surplus revenue. Further, the Applicant anticipates no bad debt due to its reimbursement by TennCare for 96% of its expenses, with the remaining 4% anticipated to come from residents' SSI income. Please note that the Applicant's lease payments are structured to allow the Landlord to fulfill its responsibility to maintain the building, so the Applicant will not be responsible for repairs and upkeep of the facility beyond the usual tenant duties such as lawn care and cleaning. Additionally, the Projected Data Chart accounts for residents' dietary meals and supplies expenses in the "Other Expenses" line item at D.6 in the chart itself and in the "Miscellaneous" category if one refers to the itemization of that line item following the Projected Data Chart.

With respect to the losses shown in the Historical Data Chart for 2014, 2015 and 2016 and the projected net income in the Projected Data Chart, the Applicant notes that prior to 2015 it was the obligor on its mortgage financing regarding the current facility (as well as numerous of its other facilities). In 2015 Open Arms entered into a sale-leaseback transaction regarding those facilities, which changed how Open Arms paid the occupancy costs for its facilities (as lease payments rather than mortgage payments). However, due to the requirements of the cost-based reimbursement methodology for ICF/IID facilities (including requirements as to the calculation of the depreciation allowance for the landlord's costs in a sale-leaseback transaction), there is a "lag" which results in the changes from mortgage payments to lease payments not appearing until 2016.

**D. Complete Projected Data Charts on the following two pages - Do not modify the Charts provided or submit Chart substitutions!**

The Projected Data Chart requests information for the two years following the completion of the proposed services that apply to the project. Please complete two Projected Data Charts. One Projected Data Chart should reflect revenue and expense projections for the **Proposal Only** (i.e., if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility). The second Chart should reflect information for the total facility. **Only complete one chart if it suffices.**

*Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.*

**Response:** Please see Attachment B. Economic Feasibility – C. Please note that the estimated average annual rental cost will be tied to the anticipated principal and interest payments due from FDG to its lender, and the initial principal amount will be related to the costs of construction and development. The currently estimated annual rental cost averages \$110,000, but, due to the above, annual rental cost will be higher in early years and decrease in later years as the outstanding principal balance of the loan decreases.

- E. 1) Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table.



	Previous Year	Current Year	Year One	Year Two November 22, 2017 2:32 P.M.	% Change (Current Year to Year 2)
<b>Gross Charge (Gross Operating Revenue/Utilization Data)</b>	\$423.59	\$479.69	\$614.66	\$612.41	15.7%
<b>Deduction from Revenue (Total Deductions/Utilization Data)</b>	0	.0069	0	0	0
<b>Average Net Charge (Net Operating Revenue/Utilization Data)</b>	\$423.59	\$479.68	\$614.66	\$612.41	15.7%

- 2) Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

**Response:** The proposed charge schedule is \$614.66 per patient day for the first year of operations of the new facility. The Applicant anticipates that almost all of its revenue will come from TennCare, with some of the revenue coming from residents' SSI benefits, as required by TennCare. The money from residents' SSI benefits will be used to cover some of the cost of services. The Applicant is not aware of any residents with food stamp benefits.

- 3) Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

**Response:** As the only provider in Shelby County, the Applicant can confirm that the proposed charges are in line with rates it charges at its other facilities in the Service Area. Open Arms' proposed rate is \$614.66 per patient day, which is slightly more than the \$521.85 average rate charged by Open Arms in Shelby County. The rates charged by Open Arms in its Shelby County facilities are shown in the table below. The slight difference in rates can be explained by the additional fire safety code requirements the proposed home will need to meet as well as an anticipated increase in expenses associated with patient care. Most of the residents have been in the home for many years and are increasing in acuity level as they age. Consequently, Open Arms has to plan the proposed home keeping both current and future needs of the residents in mind, which will impact the cost of operations.

Please note that the per diem charges primarily include daily nursing services with licensed nurses or techs and primary physician services. Specialized care, hospitalizations or ancillary medical care are covered by TennCare.

Shelby County 8-Bed ICF Established Per Diem Rate	
Facility	Rate
Open Arms 4240 Raleigh Millington Road	\$517.78
Open Arms 4254 Raleigh Millington Road	\$526.39
Open Arms 1445 Greendale Avenue (Shelby #2)	\$512.70

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projected gross operating revenue anticipated by payor classification for the first year of the project by completing the table below.

**Response:** All Residents are TennCare/Medicaid recipients. This project is intended to provide specialized services to TennCare/Medicaid recipients in need of ICF level care. The Applicant anticipates that 96% of its revenue will come from TennCare and the remaining 4% from resident's SSI income.

- H. Provide the projected staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions. Additionally, please identify projected salary amounts by position classifications and compare the clinical staff salaries to prevailing wage patterns in the proposed service area as published by the Department of Labor & Workforce Development and/or other documented sources.

**Response:** ICF/IID services contemplate more than nursing level care; there is requirement for "active treatment," meaning individualize programming. Each client is required to have a specific and dynamic individualized habilitation plan of services. Regulations require the involvement of a multidisciplinary team to evaluate, design and implement client plans, including a Qualified MR Professional, Dietician and Behavioral Analyst. These professionals staff the individual habilitation plan teams, design programs and environments, monitor progress and revise as necessary to recognize changing client needs on an individualized basis.

Position Classification	Existing FTEs (2017)	Projected FTEs Year 1	Average Wage (Contractual Rate)	Area Wide/Statewide Average Wage
<b>a) Direct Patient Care Positions</b>				
RN	0.25	0.25	\$60,000	\$57,590
LPN	1.98	1.98	\$38,836	\$37,180
Qualified MR Professional	0.13	0.13	\$65,000	N/A
Direct Support Staff	12.50	20.05	\$22,431	\$23,340
<b>Total Direct Patient Care Positions</b>	14.86	22.41		
<b>b) Non-Patient Care Positions</b>				
Resident Manager	1.00	1.00	\$34,000	N/A
Maintenance	0.25	0.25	\$34,000	N/A
Central Office	0.75	0.75	Varies	Varies
<b>Total Non-Patient Care Positions</b>	2	2		
<b>Total Employees (A+B)</b>	16.86	24.41		
<b>c) Contractual Staff</b>				
Speech Therapist	0.13	0.13	\$80/hour	\$70,810
Occupational Therapist	0.13	0.13	\$65/hour	\$82,830
Physical Therapist	0.13	0.13	\$75/hour	\$85,420
<b>Total Staff (a+b+c)</b>	17.25	24.8		

Source: Tennessee Department of Labor & Workforce Development (2016 LMI)

- I. Describe all alternatives to this project which were considered and discuss the advantages and disadvantages of each alternative including but not limited to:

HF-0004 Revised 12/2016 - All forms prior to this time are obsolete.

RDA 1651

**Supplemental #1**

**November 22, 2017**

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**Supplemental Attachment – Integra Principals**

## **INTEGRA PRINCIPALS**

### **George Stevens**

George Stevens is Integra's Chief Executive Officer, overseeing the management of the company. George has more than thirty years' experience in medical delivery system development and mergers and acquisitions of health care and related businesses.

### **Joseph Torrence**

Joe Torrence assists with the financial structuring of matters for Integra's clients. Joe has more than forty years of experience in the affordable housing field, beginning with a role in the Tennessee Housing Development Agency, which he followed up with an investment banking role related to affordable housing. Joe also has significant experience owning and operating affordable housing.

### **Richard Brown**

Dick Brown oversees development and strategic planning for Integra. Former general counsel to the Tennessee Department of Mental Health and Retardation (now known as DIDD), Dick also has extensive experience in capital facilities financing and is also a former investment banker. Dick founded Oak Hill Advisors, a Nashville-based financial advisory firm providing services for capital market transactions, public / private partnerships and strategic development initiatives for clients in the government, health care, housing and real estate sectors and non-profit organizations.

### **Jeff Mastroleo**

Jeff Mastroleo oversees financial planning and structuring for Integra and its clients. Managing Director of Healthcare Banking at Hancock Bank, Jeff has a record of profitability and prudent growth. He has been successful in establishing deep internal/external relationships; developing and managing to appropriate financial metrics; and, passionately pursuing excellence. Expertise includes commercial healthcare, municipal finance, and treasury/cash management. Previously he served as Senior Vice President of Healthcare for Community Bank, and before that was Senior Vice President, Healthcare Banking Group, of First Tennessee Bank.

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**Supplemental #1**

**November 22, 2017**

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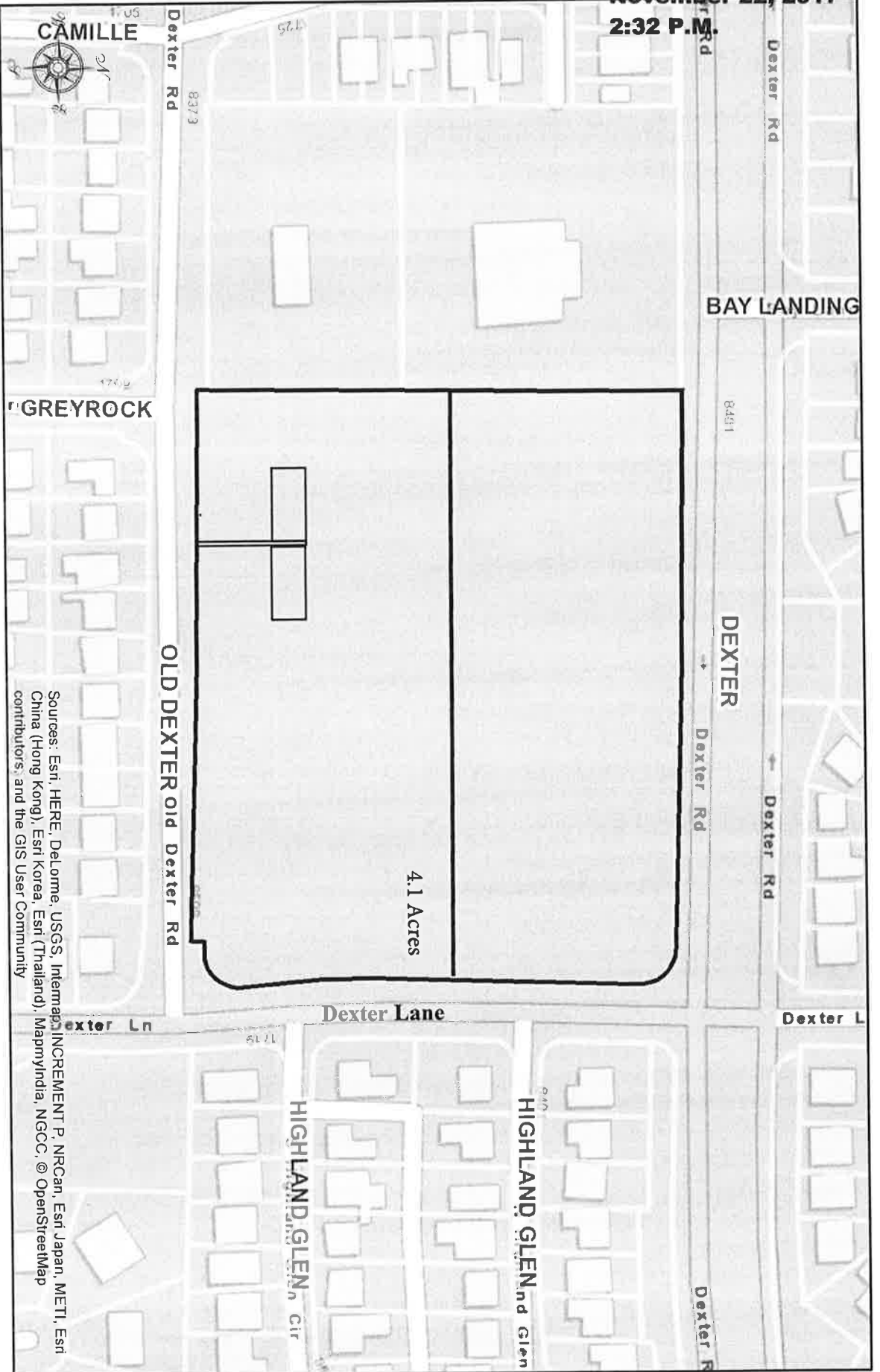
**Supplemental Attachment – Replacement Plot Plan**

# Old Dexter Road

Supplemental #1

November 22, 2017

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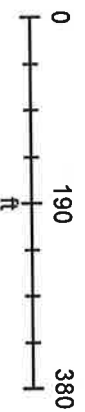
Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

## TOM LEATHERWOOD, REGISTER OF DEEDS SHELBY COUNTY, TENNESSEE

DISCLAIMER: PROPERTY TAX MAPS AND PARCEL BOUNDARIES DO NOT REFLECT ACCURATE SURVEY INFORMATION OR EXACT LEGAL OWNERSHIP BOUNDARIES, AND ARE ONLY PROVIDED FOR GENERAL INFORMATION PURPOSES. THEREFORE, THEY SHOULD NOT BE RELIED UPON AS A REPRESENTATION OF ANY PROPERTY FOR ANY PURPOSE.



MAP DATE: November 14, 2017



**Supplemental #1**

**November 22, 2017**

**2:32 P.M.**

**Supplemental Attachment – Replacement Projected Data and Historical Data**  
**Charts**

November 22, 2017

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☒ Total Facility☐ Project Only

## HISTORICAL DATA CHART

Give information for the last *three* (3) years for which complete data are available for the facility or agency. The fiscal year begins in January (Month).

	Year <u>2014</u>	Year <u>2015</u>	Year <u>2016</u>
A. Utilization Data ( <b>Resident Bed Days</b> )	2,872	2,896	2,910
Revenue from Services to Patients			
B.			
1. Inpatient Services	\$ 1,197,706	\$ 1,226,720	\$ 1,393,763
2. Outpatient Services			
3. Emergency Services			
4. Other Operating Revenue (Specify) <u>Donations</u>	4,302		2,126
<b>Gross Operating Revenue</b>	<b>\$ 1,202,008</b>	<b>\$ 1,226,720</b>	<b>\$ 1,395,889</b>
C. Deductions from Gross Operating Revenue			
1. Contractual Adjustments	\$	\$	\$
2. Provision for Charity Care	321		20
3. Provisions for Bad Debt			
<b>Total Deductions</b>	<b>\$ 321</b>	<b>\$ 0</b>	<b>\$ 20</b>
<b>NET OPERATING REVENUE</b>	<b>\$ 1,201,687</b>	<b>\$ 1,226,720</b>	<b>\$ 1,395,869</b>
D. Operating Expenses			
1. Salaries and Wages			
a. Direct Patient Care	637,108	644,028	681,317
b. Non-Patient Care	40,667	41,108	43,488
2. Physician's Salaries and Wages			
3. Supplies	60,409	64,107	59,804
4. Rent			
a. Paid to Affiliates			
b. Paid to Non-Affiliates		117,825	153,600
5. Management Fees:			
a. Paid to Affiliates		56,070	74,760
b. Paid to Non-Affiliates			
6. Other Operating Expenses	386,485	382,834	439,135
<b>Total Operating Expenses</b>	<b>\$ 1,124,669</b>	<b>\$ 1,305,972</b>	<b>\$ 1,452,104</b>
E. <b>Earnings Before Interest, Taxes and Depreciation</b>	<b>\$ 77,018</b>	<b>\$ -79,252</b>	<b>\$ -56,235</b>
F. Non-Operating Expenses			
1. Taxes	\$	\$	\$
2. Depreciation	34,853	74,091	91,680
3. Interest	18,772	12,528	16,569
4. Other Non-Operating Expenses	53,425		
<b>Total Non-Operating Expenses</b>	<b>\$ 107,050</b>	<b>\$ 86,619</b>	<b>\$ 108,249</b>
<b>NET INCOME (LOSS)</b>	<b>\$ -30,032</b>	<b>\$ -165,871</b>	<b>\$ -164,484</b>

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**Supplemental #1****November 22, 2017****2:32 P.M.**

<b>NET INCOME (LOSS)</b>	\$ -30,032	\$ -165,871	\$ -164,484
G. Other Deductions			
1. Annual Principal Debt Repayment	\$ 53,760	\$ 74,091	\$ 91,680
2. Annual Capital Expenditure			
<b>Total Other Deductions</b>	\$ 53,760	\$ 74,091	\$ 91,680
<b>NET BALANCE</b>	\$ -83,792	\$ -239,962	\$ -256,164
<b>DEPRECIATION</b>	\$ 34,853	\$ 74,091	\$ 91,680
<b>FREE CASH FLOW (Net Balance + Depreciation)</b>	\$ -48,939	\$ -165,871	\$ -164,484

- ☒ Total Facility  
☐ Project Only

**HISTORICAL DATA CHART-OTHER EXPENSES**

<b>OTHER EXPENSES CATEGORIES</b>	<b>Year<sup>2014</sup></b>	<b>Year<sup>2015</sup></b>	<b>Year<sup>2016</sup></b>
1. <u>Professional Services Contract</u>	\$ 71,409	\$ 70,735	\$ 81,137
2. <u>Insurance</u>	14,374	14,238	16,332
3. <u>IT Support</u>	7,383	7,314	8,389
4. <u>Leased Equipment &amp; Vehicles</u>	18,613	18,437	21,148
5. <u>Repairs &amp; Maintenance</u>	20,534	20,340	23,331
6. <u>Provider Tax</u>	65,029	64,414	73,887
7. <u>Utilities</u>	25,000	24,764	28,406
8. <u>Transportation &amp; Travel</u>	13,745	13,616	15,618
9. <u>Communications</u>	9,036	8,951	10,267
10. <u>Miscellaneous</u>	141,362	140,025	160,620
<b>Total Other Expenses</b>	\$ 386,485	\$ 382,834	\$ 439,135

**Supplemental #1**

**November 22, 2017**

**2:32 P.M.**

## PROJECTED DATA CHART

Give information for the two (2) years following the completion of this proposal. The fiscal year begins in January (Month).

	Year <u>1</u>	Year <u>2</u>
A. Utilization Data (Resident Bed Days)	<u>2,910</u>	<u>2,898</u>
B. Revenue from Services to Patients		
1. Inpatient Services	\$ <u>1,788,661</u>	\$ <u>1,774,764</u>
2. Outpatient Services	<u>                    </u>	<u>                    </u>
3. Emergency Services	<u>                    </u>	<u>                    </u>
4. Other Operating Revenue (Specify) <u>                                    </u>	<u>                    </u>	<u>                    </u>
<b>Gross Operating Revenue</b>	<b>\$ <u>1,788,661</u></b>	<b>\$ <u>1,774,764</u></b>
C. Deductions from Gross Operating Revenue		
1. Contractual Adjustments	\$ <u>                    </u>	\$ <u>                    </u>
2. Provision for Charity Care	<u>                    </u>	<u>                    </u>
3. Provisions for Bad Debt	<u>                    </u>	<u>                    </u>
<b>Total Deductions</b>	<b>\$ <u>0</u></b>	<b>\$ <u>0</u></b>
<b>NET OPERATING REVENUE</b>	<b>\$ <u>1,788,661</u></b>	<b>\$ <u>1,774,764</u></b>
D. Operating Expenses		
1. Salaries and Wages		
a. Direct Patient Care	<u>881,689</u>	<u>889,926</u>
b. Non-Patient Care	<u>43,512</u>	<u>44,037</u>
2. Physician's Salaries and Wages	<u>                    </u>	<u>                    </u>
3. Supplies	<u>60,831</u>	<u>61,500</u>
4. Rent		
a. Paid to Affiliates	<u>                    </u>	<u>                    </u>
b. Paid to Non-Affiliates	<u>244,444</u>	<u>239,112</u>
5. Management Fees:		
a. Paid to Affiliates	<u>74,760</u>	<u>74,760</u>
b. Paid to Non-Affiliates	<u>449,350</u>	<u>453,055</u>
6. Other Operating Expenses	<u>                    </u>	<u>                    </u>
<b>Total Operating Expenses</b>	<b>\$ <u>1,754,586</u></b>	<b>\$ <u>1,762,390</u></b>
E. Earnings Before Interest, Taxes and Depreciation	\$ <u>34,075</u>	\$ <u>12,374</u>
F. Non-Operating Expenses		
1. Taxes	\$ <u>                    </u>	\$ <u>                    </u>
2. Depreciation	<u>26,575</u>	<u>4,874</u>
3. Interest	<u>7,500</u>	<u>7,500</u>
4. Other Non-Operating Expenses	<u>                    </u>	<u>                    </u>
<b>Total Non-Operating Expenses</b>	<b>\$ <u>34,075</u></b>	<b>\$ <u>12,374</u></b>
<b>NET INCOME (LOSS)</b>	<b>\$ <u>0</u></b>	<b>\$ <u>0</u></b>

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**November 22, 2017****2:32 P.M.****NET INCOME (LOSS)**\$ 0**G. Other Deductions**

1. Estimated Annual Principal Debt Repayment

\$ 26,575\$ 4,874

2. Annual Capital Expenditure

**Total Other Deductions** \$ 26,575\$ 4,874**NET BALANCE** \$ (26,575)\$ (4,874)**DEPRECIATION** \$ 26,575\$ 4,874**FREE CASH FLOW (Net Balance + Depreciation)** \$ 0\$ 0☒ Total Facility☐ Project Only**PROJECTED DATA CHART-OTHER EXPENSES****OTHER EXPENSES CATEGORIES****Year 1****Year 2**1. Professional Services Contract\$ 83,025\$ 83,7092. Insurance16,71216,8503. IT Support8,5848,6554. Leased Equipment & Vehicles21,64021,8195. Repairs & Maintenance23,87424,0716. Provider Tax75,60676,2297. Utilities29,06729,3068. Transportation & Travel15,98116,1139. Communications10,50610,59210. Miscellaneous164,355165,712**Total Other Expenses**\$ 449,350\$ 453,056

**Supplemental #1**

**November 22, 2017**

**2:32 P.M.**

**Supplemental Attachment – Replacement Management Agreement**

**AGREEMENT TO PROVIDE MANAGEMENT SERVICES**

*OPEN ARMS-Shelby #3*

\_\_\_\_ *Dexter Road and Dexter Lane, Cordova (Shelby County), Tennessee 38016*

**Integra Resources, LLC, Manager**

**and**

**Open Arms Care Corporation, doing business as**

**OPEN ARMS--\_\_\_\_Old Dexter Road, Owner**

**Supplemental #1**

**November 22, 2017**

**2:32 P.M.**

**MANAGEMENT AGREEMENT**

*OPEN ARMS--\_\_\_\_ Old Dexter Road*

THIS MANAGEMENT AGREEMENT ("Agreement"), effective as of \_\_\_\_\_, 2017, between OPEN ARMS CARE CORPORATION, a Georgia nonprofit corporation, doing business as OPEN ARMS--\_\_\_\_ Old Dexter Road ("Open Arms"), and INTEGRA RESOURCES, LLC, a Tennessee limited liability company ("Integra").

**RECITALS:**

WHEREAS, Open Arms, desires to provide for management of a facility providing intermediate care services for individuals with intellectual disabilities ("ICF/IID") located at \_\_\_\_\_ Dexter Road and Dexter Lane, Cordova (Shelby County), Tennessee 38016, commonly referred to as OPEN ARMS----\_\_\_\_ Old Dexter Road (the "Facility") by Integra; with a Facility-specific TennCare provider number to be issued by the State of Tennessee after the Certification Date (as defined in the Lease described below); and

WHEREAS, Integra desires to be engaged by Open Arms to provide such services;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

1. **Open Arms as Provider.** Open Arms, as the official provider of record for TennCare/Medicaid purposes, shall hold all authorizations and licenses necessary or incidental thereto with respect to the Facility. Notwithstanding any other provision to the contrary herein contained, Open Arms shall at all times exercise ultimate control over the assets and operation of the Facility. It is understood and agreed that the relationship between the parties hereto is that of independent contractors, and nothing herein contained shall be deemed to create or authorize the creation of the relationship of partnership or joint venture between said parties.

2. **Integra's Obligations.** In accordance with the provisions of this Agreement, Integra shall assume day to day operational responsibility for each Facility and shall manage and operate the Facility efficiently in accordance with the standards prevailing in the ICF/IID industry. Without limitation, during the term of Integra's management of the Facility hereunder, Integra shall perform the following specific management services for Open Arms with respect to the Facility:

(a) In general, manage the Facility so as to meet all requirements of state and federal licensing, and reimbursement certification (as well as to meet the prevailing standards for applicable quality assurance and accreditation groups pertaining to the Facility), all as applicable to an ICF/IID facility, and provide care for the Facility's residents, which care shall include but shall not be limited to the providing or monitoring of:



- (i) the medical and psychological condition of the residents, including maintenance of medical records;
  - (ii) the activities, both personal and familial, of the residents;
  - (iii) the dietary requirements of the residents;
  - (iv) physical therapy and day services programs for the residents; and
  - (v) the quality of life of the residents.
- (b) Provide care and treatment to all of the Facility's residents, protecting their rights pursuant to applicable state and federal law, including laws pertaining to safe-guarding and accounting for residents' personal funds.
- (c) Maintain each Facility and its premises in a state of good operating condition and repair, reasonable wear and tear excepted, and in a manner that conforms to the obligations of Open Arms pursuant to a Lease Agreement dated as of \_\_\_\_\_, 2018 between Open Arms, as tenant, and Facilities Development Group, LLC, as landlord ("Landlord") (the "Lease"), and the Omnibus Agreement for Leases, dated as of the date hereof, between Open Arms and Facilities Development Group, LLC, (the "Omnibus Agreement").
- (d) Provide well-qualified Integra employees to serve as the Market Area Director for the area where the Facility is located, senior "home office" management staff and other staff, all as required to meet Integra's obligations under this Agreement, which employees will have overall authority for the day to day operation and management of the Facility. The remaining day-to-day staff of the Facility, including the Facility administrator or director, shall consist of employees of Open Arms, provided, however, that Integra shall have full authority within the scope of this Agreement and the applicable approved annual Budget, to manage, hire, train, determine compensation for and, at Integra's discretion, fire such staff and employees. Integra covenants that it shall not discriminate against any such employee or any member of such staff, or applicant therefor, because of race, religion, color, national origin, sex, handicap, military status, age, or any other basis protected by law, all in accordance with applicable law.
- (e) Subject to the limitations of Section 5 hereof, purchase on commercially reasonable terms in Open Arms' name and behalf, all equipment, repairs, improvements, furniture and fixtures required for the efficient operation of the Facility and to maintain the Facility in a state of good operating condition and repair, commensurate with the standards and quality of other similar facilities.
- (f) Subject to the limitations of Sections 4(b) and 5 hereof, contract with third parties, at commercially reasonable terms and rates, in Open Arms' name and behalf, for the rendition of the following services to Open Arms and to clients of Open Arms: (i) therapy services, e.g. occupational, speech and physical; (ii) medical services, e.g. medical doctors, nurses, pharmacists, psychologists, dentists and dieticians; and (iii)

services related to maintenance of heating, ventilation and air conditioning, plumbing, security and other building and equipment systems, alarms, telecommunication systems, vehicles and copiers, all such services to be rendered at the Facility in the ordinary course of business (hereinafter referred to as "Routine Services"). Additionally, with the prior written consent of Open Arms, which shall not be unreasonably withheld, Integra may sub-contract its management duties in the areas of ancillary services, financial services, accounting services, human relations services, staff development services, governmental relations and policy and forms development to one or more sub-contractors reasonably chosen by Integra, and which may be related to Integra (with any costs associated with such sub-contracting to be the sole expense of Integra). Otherwise, with respect to its obligations hereunder, Integra shall not contract with any Affiliate of Integra or its officers or directors. For purposes of this Agreement, an Affiliate shall mean any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Integra. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Integra, whether through the ownership of voting securities, by contract or otherwise ("Affiliate"). Integra's authority to contract under this Section 2(f) shall include the authority to amend, modify or terminate any such contract.

(g) Integra will on a regular basis direct and coordinate the development of operational policies and procedures for the Facility and submit such recommendations to Open Arms for its input, review and approval. Integra will annually review and, as appropriate, prepare recommendations as to changes in operational policies and procedures for the Facility and submit such recommendations to Open Arms for its review and approval. Said policies and procedures shall meet all applicable state and federal licensing and reimbursement certification requirements, as well as the requirements of such quality assurance and accreditation groups as may have jurisdiction over the Facility.

(h) Perform all accounting, bookkeeping, and record keeping functions to enable Open Arms to meet the financial reporting, record keeping, and budgetary requirements of (x) the Lease (and any lender to the Landlord, as may be required by the Lease) (y) all applicable statutes, rules or regulations of governmental agencies and (z) Open Arms as described in this Agreement. All such reporting and record keeping shall be maintained on a calendar year, accrual basis. Integra shall arrange for the timely annual audit of the financial statements of Open Arms, and the preparation of the cost reports for the Facility by a nationally recognized firm of independent certified public accountants selected by Open Arms. The accounting and other services to be performed by Integra hereunder or under Integra's supervision with respect to the Facility shall include, but not be limited to the following:

- (i) The preparation of monthly financial statements of operations and statistical reports for the Facility and combined monthly statements of operations for the Facility to be submitted to Open Arms within twenty-five (25) days after the end of each month.

- (ii) The maintenance of all records for resident billing, billing for all accounts receivable and (to the extent practicable without undue expenditure of funds) collection of same and recommendations to Open Arms for write-offs of uncollectible accounts receivable or contracted adjustments and the reasons for such recommendations.
- (iii) The maintenance of all records for accounts payable and the payment of the same.
- (iv) The preparation of support schedules and analyses for TennCare/Medicaid cost reports and Federal Form 990 information returns; and the review of Federal Form 990 returns and TennCare/Medicaid cost reports as prepared by external auditors.
- (v) The preparation of all necessary reports and returns for all sales, use, ad valorem (for both real and personal property) and occupancy taxes.
- (vi) The maintenance of a complete general ledger recording and summarizing the transactions of the Facility.
- (vii) The maintenance of any other records required by the Lease.
- (viii) The maintenance of records relating to the budgeting, approval, purchase, payment and reimbursement for capital improvement items (whether paid from the Reserve, the Depreciation Reserve Fund, or from capital improvement term loan advances (all as defined and described in the Omnibus Agreement, collectively "Capital Expenditures"); the generation and distribution of monthly reports on activity, and the preparation of reimbursement requests.
- (ix) By the 25th day of the month following each calendar quarter and by the 25<sup>th</sup> day after each change in the Budget (as defined in Section 2(i) hereof), the delivery to Open Arms of a written report and analyses showing calculations with respect to Open Arms' compliance with each rate and liquidity covenant in the Lease for the period(s) in question.
- (x) No later than the 25th day following the end of each calendar quarter, Integra shall prepare and submit to Open Arms a proposed quarterly cash flow budget projecting cash receipts and disbursements for the fifteen (15) months that begin with that quarter, based on the proposed operating and capital budgets, together with recommendations as to the use of projected cash flow in excess of short-term operating requirements and/or as to the sources and amounts of additional cash flow that may be required

to meet operating requirements and capital requirements. Integra shall revise the cash flow budget quarterly and submit said revised cash flow budget to Open Arms in accordance with the schedule described above in this Section h(x).

(i) The Facility annual operating budget (the "Budget") for the calendar year 2017 shall be attached hereto as Exhibit A, after finalization and approval in writing by each party hereto on or before the Certification Date. For each subsequent calendar year, Integra shall prepare and submit to Open Arms, no later than sixty (60) days before the beginning of each subsequent calendar year (unless a written extension of no more than twenty (20) days is granted by Open Arms), a proposed Facility annual budget, in the same format as Exhibit A, covering the operation of the Facility as follows:

- (i) An annual operating budget setting forth an estimate of consolidated operating revenues and expenses of the Facility for the next calendar year, together with an explanation of anticipated changes in Facility utilization, reimbursement rates, staffing plan, scheduled training plan, non-wage costs, and all other factors differing significantly from the current year.
- (ii) A three-year cash flow budget projecting cash receipts and disbursements for the next twelve (12) calendar quarters based on proposed operating and capital budgets, together with recommendations as to the use of projected cash flow in excess of operating requirements and/or as to the sources and amounts of additional cash flow that may be required to meet operating requirements and capital requirements.
- (iii) An annual capital needs budget setting forth an estimate of anticipated capital expenditures anticipated to be needed for the Facility for the next calendar year, to be presented to the Landlord pursuant to the Lease.
- (iv) At any other time that Integra reasonably determines that a current budget is not feasible, Integra shall submit promptly a revised budget to Open Arms for approval, together with a written explanation of the basis for any modification from the budget previously approved by Open Arms. Open Arms shall not unreasonably withhold its approval of the budgets (including any revised budget) submitted by Integra. In the event Open Arms fails to approve a budget submitted by Integra for any subsequent year, the operating budget for such year will be the budget of the previous year plus a three percent (3%) escalation of the total amount thereof.

(j) Use its best efforts to operate the Facility in accordance with the provisions of the Budgets submitted to and approved in writing by Open Arms.

(k) Subject to the limitations of Section 16 hereof, act as Open Arms' agent and diligently and competently represent Open Arms in any matter involving operational issues, management issues, governmental issues, legislative issues and administrative issues, after promptly notifying Open Arms in writing of any such matter (other than notification of such matters that are reasonably deemed immaterial by Integra in scope and occur in the ordinary course of business, which notification shall not be required), said matters to include but not be limited to (i) any actions or determinations of or before any governmental agencies, including but not limited to those related to licensure of Open Arms or the Facility and TennCare/Medicaid rate adjustments; (ii) ad valorem tax liabilities or valuation determinations; (iii) EEOC issues or complaints or (iv) contracts necessary to perform day to day operational responsibilities.

(l) Operate the Facility in accordance with Open Arms' obligations under the Lease and other third-party contracts related to the operation of the Facility, and properly and punctually will perform all of Integra's obligations under this Agreement, unless otherwise directed by Open Arms, in a manner to cause Open Arms' compliance with its obligations under the Lease and said third-party contracts. Except as otherwise set forth herein, including but not limited to Section 5 hereof, Integra shall have no obligation to be financially responsible for funding any Costs of Operation (as that term is defined in Section 4(b)) or for funding the cost of any repairs, renewals or replacements, or make any payments under the terms of the Lease except from Open Arms' funds unless the need for any such payment, repair, renewal or replacement arises as a result of the negligence, malfeasance or breach of this Agreement by Integra. Nothing herein shall constitute a guarantee by Integra that the Facility, whether individually or collectively, will be able to meet the covenants or requirements set forth in the Lease or any other level of financial performance.

(m) Cause its representatives reasonably requested by Open Arms to attend quarterly meetings of the Board of Directors of Open Arms (and such other meetings of such Board as Open Arms may reasonably request) for the purpose of providing information and advice concerning the management of and issues related to the Facility. The direct out-of-pocket costs and expenses of attending any such meetings shall be deemed a part of the Costs of Operation.

(n) Arrange for architectural, engineering, and construction services in connection with any and all subsequent capital improvements to the Facility, and diligently oversee on behalf of Open Arms the construction of such capital improvements.

(o) Manage the Facility in a manner consistent with the maintenance of Open Arms' section 501(c)(3) status. In particular, but without limitation, Integra shall not evict any resident from the Facility for inability to pay any fees or charges without the prior written consent of Open Arms.

(p) Engage in all governmental and community relations activities which are reasonably appropriate for the successful reputation and operation of the Facility, and

maintain good communications with governmental and other organizations, in regard to the operation and management of the Facility.

(q) Subject to the limitations of Section 5 hereof and Open Arms' prior written approval, contract, at commercially reasonable terms and rates, in Open Arms' name and behalf, for the following:

- (i) Insurance, including commercial auto, general and professional liability, workers compensation, property, excess liability and fidelity;
- (ii) Employee benefits, including medical/hospital and life insurance for the Open Arms employees. Integra will coordinate audits necessary to verify the accuracy of submissions estimates and will provide the necessary policy maintenance services as required by the insurance carrier and the provisions of the insurance contracts.

(r) In conjunction with each insurance policy renewal or change in insurance coverage, provide Open Arms with a written understandable explanation of the new coverage's insurance benefits, claims procedures, and other pertinent information related to the new coverage, as well as the cost and experience history for the immediately preceding insurance coverage provided to Open Arms' employees.

(s) No later than the 30th day following the end of each month, provide Open Arms' Board of Directors with a written review of current operations, including information concerning periodic service reviews performed by Integra, and such other operational reporting reasonably sufficient for Open Arms' oversight responsibilities, including reporting of surveys, response to surveys, abuse reports and other special concerns.

Notwithstanding anything herein to the contrary, Open Arms shall have all the requisite power and authority to operate the Facility as shall be required by the State of Tennessee at the level of power and authority to be possessed by the licensed operator of a facility such as the Facility in the State of Tennessee.

Notwithstanding the foregoing, Integra may begin assisting with the transition of the Facility to the services to be provided pursuant to this Agreement up to fifteen (15) days in advance of the effective date of this Agreement.

3. **Open Arms' Rights and Obligations.** During the term of Integra's management of the Facility hereunder, the obligations of Open Arms with respect to the management of the Facility shall consist of the following:

(a) In writing during the second quarter of each calendar year, and orally at each meeting of Open Arms' Board of Directors, to furnish to Integra a report on the goals and general policies of Open Arms and their implementation, as well as procedural guidance and direction for the operation of the Facility. Additionally, Open Arms shall

periodically appoint and replace, in the discretion of Open Arms, individuals to serve on any "joint operating committee" for the Facility or similar group to oversee and offer advice to Integra with respect to the day-to-day operations of the Facility.

(b) At any time and from time to time, to examine, observe, and inspect the Facility, and any and all records and reports applicable thereto and to the services and functions of Integra.

(c) To consider the approval of the Budgets and annual plans submitted by Integra for the operation of the Facility, which approval shall not be unreasonably withheld.

(d) With the recommendation and assistance of Integra, to establish operating policies, standards of operation, admission policies, standards of service and maintenance and resident rates and other charges for the Facility's residents. Further, Open Arms, as Lessee, agrees to use diligent good faith efforts to comply with all of its obligations set forth in the Lease, without limitation on Integra's contractual obligations to effect such compliance on Open Arms' behalf.

(e) To assist with the establishment of policies affecting the Facility or the operation thereof which are not inconsistent with the responsibilities assigned to Integra under the terms of this Agreement.

(f) To play an active role in promoting the good will and public image of the Facility, their residents and, to the extent appropriate, Integra.

(g) To cooperate with Integra in executing all forms and returns required pursuant to applicable taxing statutes, rules and regulations and applicable governmental reimbursement programs.

(h) To use diligent good faith efforts to maintain its status as a corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") and which is not a private foundation.

(i) To maintain its status as provider of record within the State of Tennessee, including but not limited to maintaining records and Board of Directors minutes addressing goals and services actually received under this Agreement, and the continuing need and effectiveness of such services.

Notwithstanding anything herein to the contrary, Open Arms shall have all the requisite power and authority to operate the Facility as shall be required by the State of Tennessee at the level of power and authority to be possessed by the licensed operator of a facility such as the Facility in the State of Tennessee.

**4. Revenues, Costs of Operations and Management Fee.**

(a) During the term of Integra's management of the Facility hereunder, all revenues payable to the Facility shall be deposited into and paid out of one or more bank accounts established by Integra on behalf of Open Arms at a financial institution selected by Integra and approved by Open Arms and Facility Mortgagee under the Lease, which approval shall not be unreasonably withheld, all in accordance with the provisions of any "Deposit Account Control Agreement" ("DACA") or similar agreement required pursuant to the Lease. Such revenues and other amounts shall be utilized for the payment of the following items on a monthly basis in the following order of priority: (i) the Costs of Operation; (ii) payments of rent; (iii) any outstanding cash advances made by Integra (pursuant to Section 5 below); (iv) any Management Fee (as defined in Section 4(c) below) for any prior periods; and (v) the Management Fee for the current period. Notwithstanding any modification or termination of the Lease, Open Arms shall make, or cause to be made, the payments specified above to Integra in an order of priority at least as favorable to Integra as that order required by the Lease prior to any modification or termination of the Lease subsequent to the date hereof. If the Revenues (as defined in the Lease) shall be insufficient to pay all of the amounts described in clauses (i) through (iv) of this paragraph, then such amounts shall be paid from and out of any other available funds in accordance with and subject to the limitations as set forth in the Lease.

(b) The Costs of Operation shall consist of (i) all costs and expenses properly incurred in the operation and management of the Facility and day services programs in accordance with the provisions of this Agreement, including matters referred to herein as Integra's responsibility, including but not limited to any salary, compensation, expense reimbursement or payments to, or benefits for, employees of Open Arms or Integra who work at the Facility (including Market Area Directors formerly employed by Open Arms and now employed by Integra) and the costs of repairs to, and maintenance of, the Facility (but not the cost of Capital Expenditures), (ii) all premiums or charges for insurance coverage as described herein with respect to the operations of the Facility or the employees described above, (iii) direct expenses and costs incurred in connection with the purchase of necessary supplies for the Facility, the furnishing of utilities to the Facility and other necessary services furnished by independent contractors for the Facility, (iv) any audit adjustments or payments required in connection with or as a consequence of any proceeding or appeal related to reports or the returns described in Sections 2(h)(iv) and or matters arising out of issues addressed in Section 2(k) hereof; (v) any ad valorem taxes payable with respect to the Facility and (vi) reasonable costs or expenses properly incurred by Integra on behalf of Open Arms, including costs incurred due to any change in the rules and regulations of any governmental authority with jurisdiction over the Facility which costs are required to be incurred to maintain the licenses, certifications, provider agreements and applicable accreditations for the Facility (the "Costs of Operation"). Prior written approval by Open Arms is required for each reimbursement. If it is reasonably deemed necessary by Integra for Integra to provide or arrange for direct care, supervisory support or consulting services on a temporary basis to the Facility, unless otherwise provided for herein, the reasonable expenses for providing these services will be charged to Open Arms and included in the Cost of Operations.



Such expenses will include items such as employee or subcontractor wages, federal and state income taxes, benefits, travel and other direct charges, all of which shall be reasonable. If the temporarily assigned employee undertakes a work assignment for Open Arms that encompasses the period after a holiday and works at the Facility the day prior to the holiday but not on the holiday, the compensation paid to the employee for that holiday will be charged to the Facility. Vacation expenses for the temporarily assigned employee will be included as a part of the benefit cost on a prorated basis.

- (c) (i) The Management Fee shall be paid to Integra in accordance with the terms of this Section 4(c) (the "Management Fee").
- (ii) Subject to adjustment as provided in this paragraph, the Management Fee payable to Integra shall be \$74,760.00 per year. The Management Fee shall be increased annually during the term hereof by a percentage proportionate to any adjustment for inflation or cost of living applied by the Tennessee TennCare/Medicaid program (or successor program) with respect to costs utilized for purposes of determining applicable TennCare/Medicaid rates for such year, to be effective at the time of the adjustment in the TennCare/Medicaid rates received by Open Arms. In the event the Facility, or any replacement facility, shall no longer be operated under this Agreement, the Management Fee payable under this Agreement shall no longer accrue, commencing with the date following the cessation of such operation. Notwithstanding anything to the contrary contained herein, if an event of default has occurred pursuant to the Lease due to a the failure of Integra to comply with the requirements of this Agreement, and such Lease default has not been cured within sixty (60) days after the occurrence thereof, the Management Fee shall continue to accrue but payment thereof shall be suspended until such Lease default has been cured.
- (iii) The Management Fee shall accrue beginning with the date of this Agreement, and each month's fee as accrued shall be (a) submitted for payment by Open Arms to the agent under any "Deposit Account Control Agreement" (or similar agreement) established pursuant to the Lease within ten (10) days after Open Arms' receipt of Integra's invoice therefor; and (b) paid in accordance with the terms of such Deposit Account Control Agreement or similar agreement.

(d) To the extent amounts available for such purpose under the "Deposit Account Control Agreement" (or similar agreement) established pursuant to the Lease in any month are not sufficient to pay the Management Fee or other amounts owed to Integra ("Other Amounts"), after giving effect for the last sentence of Section 4(a) hereof, any unpaid Management Fee and Other Amounts shall accumulate interest at a simple interest rate equal to one percent (1%) per annum commencing as of the payment due

date(s) of the Management Fee and Other Amounts, and such past due Management Fee and Other Amounts plus accumulated interest thereon shall be paid promptly when revenues are sufficient to do so or other funds become available to Open Arms with which to make such payments. Such rate payable as determined in the preceding sentence shall be hereinafter referred to as the "Advance Rate."

(e) This Agreement is subject to that certain Subordination Of Management Agreements of even date herewith by and among Open Arms, Integra and Landlord (the "Subordination"), pursuant to which all Management Fees have been subordinated to the Lease and all payments of rent due thereunder, and all other amounts from time to time payable by Open Arms to Landlord, except as otherwise allowed pursuant to the Subordination.

5. **Capital Improvements and Working Capital.** To the extent not prohibited by law or the Lease, Open Arms shall have the obligation of advancing funds for all capital expenditures required by the rules and regulations of any governmental authority, and required to maintain the licenses, certifications, provider agreements and applicable accreditations for the Facility. Subject to Open Arms' prior written consent, which shall not be unreasonably withheld, and subject to Integra's compliance with its contractual obligations to Open Arms hereunder and otherwise, Open Arms shall be obligated to advance funds, or require the Landlord to advance funds, for such capital expenditures required for the efficient operation of the Facility and to maintain the Facility in good condition, commensurate with the standards and quality of other similar facilities.

Integra is hereby authorized to incur expenses and liabilities in the ordinary course of rendering the services described herein in accordance with the Budget and to purchase individual capital assets necessary for each Facility but which are not set forth in the Budget which do not have an individual cost in excess of Five Thousand Dollars (\$5,000) and a calendar year aggregate cost in excess of Fifty Thousand Dollars (\$50,000), subject to the total amount approved in the annual expense budget for Cost of Operations. The determination of whether an expenditure constitutes a Capital Expenditure shall be made pursuant to Section 2(iii) and in accordance with generally accepted accounting principles.

Subject to Integra's compliance with its contractual obligations to Open Arms hereunder and otherwise, Open Arms shall be obligated to provide all capital required to pay timely all Costs of Operation, the Management Fee, Capital Expenditures, and all obligations of Open Arms hereunder. Integra shall not be obligated to provide any working capital for the operation of the Facility, except that Integra shall be required to furnish working capital required to perform its obligations hereunder that are not to be underwritten by Open Arms.

6. **Term.** This Agreement shall commence at 12:01 a.m. on the day following the Certification Date (as defined in the Lease) (the "**Commencement Date**") and unless earlier terminated in accordance with Section 7 hereof, shall expire seven (7) years after the Commencement Date (the "**Original Term**"); provided, however, that this Agreement shall automatically renew for one (1) successive additional seven (7) year period unless notice is given in writing by either party to the other at least one hundred eighty (180) days prior to the expiration of the Original Term (the "**Initial Extension Term**"). Additionally, this Agreement

shall automatically renew for successive one (1) year periods after the end of the Initial Extension Term, unless notice is given in writing by either party to the other at least one hundred eighty (180) days prior to the expiration of the Initial Extension Term or any successive one (1) year period pursuant to the automatic renewal provisions or any agreed extensions. Except as otherwise set forth herein, the term of this Agreement shall not end on less than one hundred eighty (180) days prior notice to allow Open Arms or a successor manager of the Facility ample time to transition operations and continue care and services so as not to harm the residents of the Facility.

**7. Default, Right to Cure and Termination.**

(a) Each of the following shall be deemed to be an "Event of Default" hereunder:

- (i) If Integra fails to maintain and operate the Facility according to the standards established or imposed hereunder or by any applicable laws or regulations or governmental agencies having jurisdiction or authority over the Facility, other than solely by reason of the failure of Open Arms (unless the failure of Open Arms is due to any acts or omissions of Integra) to comply with its obligations thereunder or hereunder.
- (ii) If the certificates and authorizations for the Facility to participate under the TennCare/Medicaid program (or successor program) are suspended, canceled or revoked because either party has failed to perform its obligations hereunder and such party is not, in good faith, diligently pursuing the reinstatement of such certificates and authorizations as set forth in paragraph (b) of this Section 7.
- (iii) If either party is or becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files a voluntary petition under the provisions of the United States Bankruptcy Code, including without limitation, a petition for reorganization or arrangement or consents to an involuntary petition or is adjudicated a bankrupt.
- (iv) If either party violates, or is in breach of, any material term or condition of this Agreement. For purposes of this paragraph (iv), without limitation, (y) the failure of either Integra or Open Arms to operate the Facility in accordance with the provisions of the Budgets submitted to and approved by Open Arms or (z) the non-payment of any Management Fee or Other Amounts (as defined in Section 4(d) for a period of sixty (60) days, shall be considered a breach of a material term of this Agreement

(b) Upon the occurrence of an Event of Default, the party not responsible for the Event of Default (the "Non-Defaulting Party") may declare this Agreement

terminated; provided, however, that with respect to subsections 7(a)(i) - 7(a)(iv), this Agreement may be terminated by the Non-Defaulting Party only in the event the other party (the "Defaulting Party") fails to cure the Event of Default within thirty (30) days after written notice from the Non-Defaulting Party, which notice shall specify in sufficient detail all material information known by the Non-Defaulting Party concerning the specific circumstances of the Event of Default so as to give the Defaulting Party adequate notice and the opportunity to cure same; provided further the Non-Defaulting Party shall not have the right to terminate this Agreement if at the end of such thirty (30) day period, cure of the Event of Default is reasonably foreseeable, the Defaulting Party has taken reasonable steps to cure the Event of Default within said period, and the Defaulting Party proceeds diligently thereafter to cure the Event of Default. Notwithstanding anything to the contrary contained herein, upon an event of default under the Lease, which default continues after the giving of any required notices and the expiration of any cure periods provided for in the Lease and which has not been waived or cured as provided in the Lease, Open Arms shall have the right to terminate this Agreement upon written notice given to Integra.

- (c) (i) Upon termination of this Agreement for any reason other than (A) by reason of Integra being responsible for an Event of Default, or (B) Integra's election not to extend this Agreement at the end of the original term or any renewal term, any outstanding accrued Management Fee, Other Amounts, and advances by Integra to Open Arms pursuant to Section 5 hereof (collectively, "Open Arms Obligations") shall become immediately due and payable.
- (ii) Subject to the terms and conditions of the Lease, upon termination of this Agreement by reason of Integra's election not to extend this Agreement at the end of the original term or any renewal term, any Open Arms Obligations shall be payable by Open Arms to Integra in twelve (12) equal monthly installments, commencing thirty (30) days after the effective date of such termination, together with simple interest accruing from such effective date at the Advance Rate, payable monthly in arrears.
- (iii) Notwithstanding any other provision to the contrary contained in this Section 7(c), any payments to Integra upon termination of this Agreement for any reason shall be made only in accordance with and as limited by the restrictions set forth in the Lease.

8. **Insurance.** On behalf of, and at the expense of Open Arms, Integra shall use its best efforts to procure and maintain in full force and effect on a cost-effective basis all insurance coverage required by the Lease, or by any lender to the Landlord, or by any governmental authority with jurisdiction over the Facility, to the extent such insurance coverage requirements are stricter than any specific insurance requirements contained herein. Integra shall provide Open Arms with written evidence of such coverage at the time of inception of coverage, on an annual basis thereafter, and at any other time as requested by Open Arms, which insurance may be provided on a multi-facility basis with other facilities operated by Open Arms.

All such insurance to the extent appropriate will name Integra, Open Arms, and to the extent required by the Lease, the Landlord and any lender to the Landlord, as co-insured parties or additional insured parties. The premiums for all insurance coverage which directly insures the risks of the Facility shall be paid by Open Arms as part of the Costs of Operation. Open Arms and Integra hereby each waive any right of recovery against the other party for any claims that may be brought for any loss which is covered by fire and extended coverage insurance upon or relating to the Facility and the furnishings and equipment thereon to the extent such claims are paid by said coverage. This waiver of subrogation shall be valid and binding only in the event it is recognized and accepted by the fire and hazard insurance companies under policies obtained hereunder.

(a) Integra shall use its best efforts to (i) secure certificates of insurance for Open Arms, (ii) maintain the original of such policies at the office of Integra, (iii) deliver duplicate copies of the policies to Open Arms and the Landlord, and (iv) procure endorsements thereto prohibiting any termination or cancellation thereof until the expiration of thirty (30) days' after written notice of cancellation to all named insureds.

(b) In addition, Integra shall procure and maintain in full force and effect during the term hereof, to cover acts and omissions during the term of its services hereunder (i) \$1,000,000 each occurrence/\$1,000,000 aggregate general and professional liability insurance coverage, (ii) \$1,000,000 each occurrence/\$1,000,000 aggregate bodily injury and property damage insurance, as supplemented by general liability coverage under a \$5,000,000 umbrella policy and (iii) workers' compensation insurance coverage with limits not less than those limits carried by Open Arms respect to the Facility during the one year period prior to the date hereof, in order to insure itself against normal business risks inherent in its operation and management of the Facility and shall, to the extent possible without increases in premiums unless said increases are paid by Open Arms after Integra gives reasonable notice to Open Arms thereof, cause Open Arms to be named as an additional insured thereunder, to the extent its interests appear, on the policies evidencing such insurance. As reasonably requested by Open Arms from time to time, Integra shall provide Open Arms with written evidence that such insurance coverage remains in full force and effect.

(c) In addition, Integra shall procure and maintain in full force and effect fidelity insurance coverage on a loss discovered basis (including crime, employee dishonesty, including third party coverage) to insure against damages resulting from such acts or omissions by Integra or any of its contractors or agents which take place during the term of this Agreement. All such insurance coverage shall have a limit of not less than \$1,000,000, with a deductible of not more than \$10,000, shall name Open Arms as an additional named insured, and shall contractually require the carrier to inform Open Arms immediately in the event of any pending lapse in coverage for any reason. Simultaneously with the execution of this Agreement, Integra shall furnish Open Arms with a Certificate from said carrier evidencing the effectiveness of such insurance coverage.

9. **Use of Premises.** Integra shall not, without the prior written consent of Open Arms, at any time use the Facility or any portion thereof, or permit the Facility or any portion

thereof to be used for purposes other than an ICF/IID facility in compliance with all applicable rules and regulations of the United States and the State of Tennessee.

10. **Right to Inspect.** At any time during regular business hours, and at any time outside regular business hours if prior telephonic notice during regular business hours is given to the designated official of Integra having on-site management responsibility for the Facility, Open Arms or its representatives shall have the right to inspect the financial and other records in the actual or constructive control of Integra (and to make copies of documents as appropriate and at their expense) related to the Facility, including but not limited to books, records, data files and reports (electronic or otherwise) prepared by Integra or any other person or entity by or on behalf of Integra and maintained by Integra or such other person or entity at or in connection with the Facility with respect to in the performance of its services hereunder and the condition of the Facility.

11. **Books and Records.** All books, records, data files and reports prepared by Integra for or in connection with the management of the Facility and maintained by Integra at the Facility or at any location other than the Facility shall be available for inspection and copying by Open Arms or its representatives or the Landlord at their own expense and during normal business hours with prior written notice to Integra. It is agreed and understood that computer software and the users manuals for such software developed or acquired by Integra or used by Integra employees in connection with the management of the Facility shall not be considered "books, records, data files and reports" as those terms are used in this Section 11, provided that printouts of data generated by use of such software shall be considered such "books, records, data files and reports". Furthermore, it is agreed by the parties hereto that any computer software and the user manuals for such software developed by Open Arms employees shall remain the property of Open Arms.

12. **Cooperation at Termination.** Upon the expiration or earlier termination of term of Integra's management of the Facility hereunder, each of the parties hereto shall cooperate fully with the other in effecting an orderly transition to avoid any interruption in the rendering of the above-described services and, in that connection, Integra shall promptly surrender to Open Arms all keys, contracts, books, records, data files and reports (as such terms are defined in Section 11 hereof) maintained by Integra in connection with the management of the Facility. Furthermore, the parties hereby agree that any information received by a party or its attorneys, accountants or agents about the other party in the performance of such party's obligations hereunder, which concerns the financial or other affairs of such party, will be treated in full confidence and will not be revealed to any other persons, firms or organization.

13. **Covenant Not to Employ Personnel.** The parties acknowledge that Integra, in the performance of its obligations hereunder, utilizes certain of its employees. Open Arms recognizes that Integra has incurred and will incur considerable time and expense in developing Integra employees. For this reason, Open Arms covenants with Integra that Open Arms shall not, at any time during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, directly or indirectly solicit the employment of any person who is at that time an Integra employee or encourage any successor to Integra's duties hereunder to solicit the employment of any such person who is at that time an Integra employee for services to be rendered at or in connection with the Facility or at any other facility offering services to



persons with developmental disabilities owned or operated by Open Arms unless this covenant has been waived in writing by Integra. It is understood and agreed, however, that this covenant shall not apply to persons who were employees of Open Arms as of September 30, 2014 and were subsequently employed by Integra.

Recognizing that Integra would not have an adequate remedy at law in the event of any breach of this covenant, Open Arms agrees that the covenants set forth herein may be enforced by Integra by an appropriate restraining order or other injunctive relief.

Furthermore, Integra recognizes that Open Arms has incurred and will incur considerable time and expense in developing Open Arms employees. For this reason, Integra covenants with Open Arms that Integra shall not, at any time during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, directly or indirectly solicit the employment of any person who is at that time an employee of Open Arms, except with the prior written consent of Open Arms, not to be unreasonably withheld. In furtherance of the foregoing, it is anticipated that employees working in certain positions within Open Arms may from time-to-time have limited opportunities for advancement within Open Arms, and as such employees reach the limits of advancement opportunities at Open Arms, it may be reasonable for Integra to request the consent of Open Arms for the employment by Integra by such an individual who is advancing in his/her career path and has reached the limits of advancement within Open Arms.

Recognizing that Open Arms would not have an adequate remedy at law in the event of any breach of this covenant, Integra agrees that the covenant set forth herein may be enforced by Open Arms by an appropriate restraining order or other injunctive relief.

14. **Indemnification.** Any Defaulting Party shall release and indemnify and hold the Non-Defaulting Party and the Non-Defaulting Party's shareholders, directors, officers and employees and agents harmless from and against any and all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees) incurred and arising out of or resulting from an Event of Default by the Defaulting Party and Integra shall release and indemnify and hold Open Arms and its shareholders, directors, officers, employees and agents harmless from and against any and all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees) incurred and arising out of or resulting from actions taken by Integra outside the scope of the authority specifically granted to Integra herein. Furthermore, Open Arms shall indemnify Integra with regard to any and all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees) with regard to any action, suit or proceeding brought by a person or entity that managed the Facility prior to the date hereof; provided, however, that such indemnification by Open Arms shall extend only to such amounts as may be reimbursable costs under the TennCare/Medicaid system.

15. **Litigation or Proceedings on Behalf of Open Arms.** If any claim or cause of action of Open Arms arises during the term of this Agreement, or if any third party claim, action, or other legal or administrative proceeding arising from or related to the management of the Facility is filed against Open Arms, upon receiving notice of any such claim, cause of action or proceeding, the party receiving such notice shall promptly give notice thereof to the other party, and Integra shall have the option, exercisable in its reasonable discretion, by giving written notice thereof to Open Arms, to institute or defend such claim, action or other legal or

administrative proceeding in Integra's name or Open Arms' name, as their respective interests may appear to be claimed, provided that Integra uses good faith best efforts to proceed in such action in a manner that is in Open Arms' best interests. The reasonable costs and expenses of prosecuting and defending any such claim, action, or legal or administrative proceeding shall be reimbursed to Integra by Open Arms as Costs of Operation, except as they relate to Events of Default by Integra or the independent acts of Integra taken outside the scope of the performance of its duties hereunder or the negligence, willful misconduct or breach by Integra of its obligations hereunder, which costs and expenses shall be borne exclusively by Integra notwithstanding any other provision to the contrary herein contained. Open Arms agrees to provide reasonable assistance to Integra in the prosecution and defense of any such action upon request by Integra and upon Integra's agreement to pay all of Open Arms' expenses related thereto, except for expenses for which Open Arms is otherwise obligated hereunder. Open Arms further agrees that Integra shall have the right to recommend legal counsel for Open Arms' approval to represent the interests of Open Arms in any such claim, action or legal or administrative proceeding. Integra shall provide Open Arms with timely and periodic written reports regarding the progress of each such claim, action or proceeding. If Integra decides, in its reasonable discretion, not to institute or defend such claim, action or other legal or administrative proceeding, Integra shall notify Open Arms in writing promptly of its decision, providing Open Arms, sufficient time to take appropriate action, and in such event, Open Arms shall be fully responsible for the prosecution or defense of each such claim, action, and legal and administrative proceeding, including then prospective costs and attorneys' fees, except when the claim, action or proceeding relates to Events of Default by Integra, or the independent acts of Integra taken outside the scope of the performance of its duties hereunder, or the negligence, willful misconduct or breach by Integra of its obligations hereunder, except that Integra agrees to provide reasonable assistance to Open Arms with respect to such matters upon request by Open Arms.

**16. Compliance with Public Law 96-499.**

(a) Pursuant to regulations promulgated by the Federal Health Care Financing Administration, an agency of the Department of Health and Human Services, implementing Section 952 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) or any subsequent legislation conditioning reimbursement on the cost of services performed, insofar as this Agreement covers services valued at or costing \$10,000 or more over a twelve (12) month period, the parties agree to provide the Secretary of Health and Human Resources, upon written request, or the Comptroller General, or their duly authorized representatives, access to this Agreement and the parties' books, documents and records necessary to verify the nature and extent of the cost of the services provided by the parties. Such access shall be provided until the expiration of four (4) years after the services are furnished under this Agreement.

(b) If Integra carries out any duties of this Agreement through a subcontract with an aggregate value or cost of \$10,000 or more over a twelve month period with an Affiliate, Integra shall require in writing that the Affiliate shall make available, upon written request, to the Secretary of Health and Human Resources, or the Comptroller General, or their duly authorized representatives, the said subcontract and the books, documents and records of the Affiliate that are necessary to verify the nature and extent



of the costs of the services provided under the said subcontract. The subcontract shall require that such access shall be provided until the expiration of four (4) years after the services are furnished under the contract.

17. **Amendment or Termination as a Result of Governmental Regulation.** The parties acknowledge and agree that this Agreement is intended to comply with all state and federal laws and regulations regarding Medicare and Medicaid fraud and abuse, Open Arms' status as a recipient of governmental or private funds for the provision of health care services, or Open Arms' status as an organization described in Section 501(c)(3) of the Code. Open Arms shall have the right to terminate or amend this Agreement, if on the advice of its counsel it determines, in its reasonable judgment, that the terms of this Agreement more likely than not would be interpreted to violate any laws or regulations applicable to it, which, if violated, would jeopardize Open Arms' status as a recipient of governmental or private funds for the provision of health care services, or Open Arms' status as an organization described in Section 501(c)(3) of the Code. Notwithstanding such right to terminate, Open Arms shall first use reasonable efforts to amend this Agreement only to the extent necessary to conform the potentially violative terms to the applicable law or regulation, and will only terminate this Agreement pursuant to this Section if it determines, in its reasonable judgment, that an amendment cannot be obtained or will not result in compliance.

18. **Parties Bound.** The provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns. Except as specifically provided herein, neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party. No assignment of rights or delegation of duties shall relieve either party, as the case may be, of its obligations hereunder. Notwithstanding the foregoing, however, in respect to transfers after an event of default under the Lease, any person claiming through the deed of trust trustee or a transferee under a deed in lieu of foreclosure (the foregoing collectively referred to as the "Transferee"), the Transferee shall, at its option and without further action by Open Arms, succeed to Open Arms' rights hereunder, with or without the assumption of the obligations of Open Arms hereunder, which assumption shall be at the sole discretion of such Transferee, but in no event shall any of the foregoing be deemed a release of any of the obligations of Open Arms hereunder.

19. **Severability.** In the event any provision hereof shall be modified or held ineffective by any court in any respect, such adjudication shall not invalidate or render ineffective the balance of the provisions of this Agreement.

20. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and completely supersedes any prior oral or written agreements between the parties. Any other agreements with respect to the subject matter hereof between the parties, whether written or oral, are merged herein. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed, or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

21. **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been given (i) on the date of delivery by courier or personally, (ii) three (3) business days after deposit in the United States mail, postage prepaid by registered or certified mail, return-receipt requested to the appropriate party at the following addresses.(or at such other address as shall hereafter be designated by any party to the other party by notice given in accordance with this Section):

To Open Arms:

Open Arms Care Corporation  
6 Cadillac Drive, Suite 350  
Brentwood, TN 37027

With a copy to:

Thomas V. Chorey, Jr.  
Barnes & Thornburg LLP  
3475 Piedmont Rd., NE, Suite 1700  
Atlanta, GA 30305-3327  
Fax: 800-753-5139  
Phone: 404-846-1693  
Email: tchorey@btlaw.com

To Integra:

Integra Resources, LLC  
144 Second Avenue, North, Suite 300  
Nashville, TN 37201

With a copy to:

Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Attention: Michael D. Brent, Esq.  
Fax: 615-252-6361  
Phone: 615-252-2361  
Email: mbrent@babbc.com

22. **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

23. **Further Assurances.** The parties each hereby agree to execute and deliver all of the agreements, documents, and instruments required to be executed and delivered by them in

this Agreement and to execute and deliver such additional instruments and documents and to take such additional actions as may reasonably be required from time-to-time in order to effectuate the transaction contemplated by this Agreement.

24. **Exhibits.** Any Exhibits attached hereto constitute a part of this Agreement and are incorporated herein by reference in their entirety as if fully set forth in this Agreement at the point where mentioned herein.

25. **Tense, Captions.** In construing this Agreement, whenever appropriate, the singular tense shall also be deemed to mean the plural, and vice-versa, and the captions contained in this Agreement shall be ignored.

26. **Party Rights No Third.** Except as otherwise expressly provided herein or in the Lease, the provisions of this Agreement shall not entitle any person not a signatory hereto to any rights or reliance hereunder or in respect hereof, as a third party beneficiary or otherwise, it being the specific intention of the parties herein to preclude any and all such persons non-signatory hereto from such rights.

27. **Survival.** Any rights or obligations accrued under this Agreement at the expiration or termination of this Agreement shall survive such termination.

28. **Replacement Facility.** In the event a new replacement facility should be substituted for the Facility, whether on the same site or at a different location within the market area, all rights or obligations of the parties, including the remaining term, pursuant to this Agreement shall apply with respect to the new replacement Facility.

29. **Public Statements.** Unless otherwise required by law or court order, prior to the Commencement Date, neither Open Arms or Integra shall, without the prior written consent of the other party hereto, make any press release or other public announcement concerning the transactions contemplated by this Agreement. Provided, however, that Integra and Open Arms may announce the execution of this Agreement to their respective employees.

30. **Arbitration.** The parties hereto agree and stipulate that all claims, disputes and other matters in question or at issue between them arising out of or relating to this Agreement or the breach thereof, including, without limitation, any dispute or question concerning the scope of this arbitration clause, will be decided by arbitration in Nashville, Tennessee, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, subject to the limitations of this Section 30. This covenant to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. The parties hereto agree that one arbitrator shall arbitrate all disputes. Notice of a demand for arbitration shall be filed in writing by either party hereto with the other party hereto and with the American Arbitration Association. The demand for arbitration shall be made no later than the date when institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to vacation, modification or appeal, except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act, the terms of which Sections the parties hereto agree shall apply. Each of

the parties hereto submits to the jurisdiction of the state courts of Davidson County, Tennessee for purposes of the entry of any judgment arising out of the award of the arbitrator. All costs and expenses of each of the parties hereto with respect to the arbitration (including reasonable attorneys' fees) and the expenses of the arbitrators shall be paid by the party hereto against whom a determination by the arbitrator is made or, in the absence of a determination against one party hereto, as such arbitrator directs.

**31. Overriding Provisions.**

(a) Notwithstanding the execution date hereof, it is agreed and understood by the parties hereto that this Agreement shall be considered the agreement pursuant to which the "Manager," as such term is defined under the Lease, manages the Facility.

(b) Notwithstanding anything to the contrary contained herein, it is the intent of the parties hereto that this Agreement in all respects shall conform to the terms and conditions of the Lease. Accordingly, to the extent that any term or condition contained herein or hereunder shall conflict with any such terms or conditions contained in the Lease, then the provisions of the Lease shall control in all respects, and the terms of this Agreement shall be automatically deemed amended in an agreeable manner in order to bring this Agreement into compliance with the Lease.

(c) Notwithstanding anything to the contrary herein contained, it is understood and agreed that in the event of the default by either party hereto pursuant to the terms of any other ICF/IID Facilities Management Agreement, or the terms of the Global Management Agreement of even date herewith, the result of which default entitles the non-defaulting party thereunder to terminate such agreement, by giving notice thereof to the defaulting party, said non-defaulting party shall have an identical right to terminate this Agreement, just as if there had been an Event of Default hereunder by said defaulting party for which there was no cure within any applicable cure period.

(d) Further notwithstanding anything to the contrary herein contained, it is understood and agreed that in the event of a conflict between the provisions of this Agreement and the provisions of that certain Global Agreement to Provide Management Services, as amended, between the parties hereto executed simultaneously with the execution hereof (the "Global Agreement," by reference made an integral part hereof), the provisions of this Agreement shall govern and control over the provisions of the Global Agreement.

**November 22, 2017**

**2:32 P.M.**

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below, effective as of the Commencement Date first above written.

**OPEN ARMS CARE CORPORATION**

By: \_\_\_\_\_

Name:

Title:

**INTEGRA RESOURCES, LLC**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**FACILITY ANNUAL BUDGET**

[to be attached after finalization and approval in writing by each party hereto]

**Supplemental #1**

**November 22, 2017**

**2:32 P.M.**

**Supplemental Attachment – Proof of Publication**

**November 22, 2017**

**2:32 P.M.**

**The Commercial Appeal  
Affidavit of Publication**

**STATE OF TENNESSEE**

**COUNTY OF SHELBY**

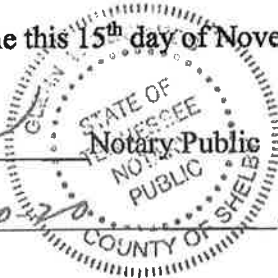
Personally appeared before me, Glenn W. Edwards, a Notary Public, Helen Curl, of MEMPHIS PUBLISHING COMPANY, a corporation, publishers of The Commercial Appeal, morning and Sunday paper, published in Memphis, Tennessee, who makes oath in due form of law, that she is Legal Clerk of the said Memphis Publishing Company, and that the accompanying and hereto attached advertisement was published in the following editions of The Commercial Appeal, to-wit:

**November 10, 2017**

Helen Curl

Subscribed and sworn to before me this 15<sup>th</sup> day of November, 2017.

Glenn W. Edwards

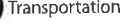
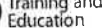


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if the United  
State of Teo

State or Federal estate taxes or claims on the Property, and are named herein as interested parties, time notice has been given to the applicable governmental entity, and the sale will be subject to applicable rights.

ject to any applicable rights of redemption held by the entity as required by 26 U.S.C. § 74 and/or Tennessee Code § 67-1433.

wise, homestead, and dower rights are expressly waived in said Deed of Trust, and the title is believed to be good; however, the undersigned will sell and convey only as Substituted Trustee.

The transfer shall be AS IS, AND WITH ALL FAULTS, and without warranties of any kind, express implied, as to the condition of the Property and the improvements located thereon (including but not limited to the

we shall make no covenant of seisin or warranty of title, express or implied, and we shall and convey the subject matter of this

The right is reserved to adjourn the day of the sale to another day, time, and place certain without further publication upon announcement at the

This property is being sold with the express reservation that the sale is subject to confirmation by the lender or trustee. This sale may be rescinded

THIS OFFICE IS ACTING AS DEBT COLLECTOR AND ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED

Clear Recon LLC  
Substitute Trustee  
5751 Uptain Road  
Suite 514  
Chattanooga, Tennessee 376

Phone: (877) 319-8840  
File No: 2191-493A  
Publication Dates: 10/27/2017,  
11/3/2017, and 11/10/2017

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Golden Gate Team

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Saturday 10am-2pm  
Memphis, TN 38118

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FOR A CERTIFICATE OF ADEQUACY

The anticipated closing date of the application is set for approximately November 1, 2017. The contact person for this project is Michael D. Brant, Esq., who may be reached at Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203. Mr. Brant's telephone number is (615) 252-2351 and his e-mail address is mbrant@bradley.com.

Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Dearborn Street

**302-268-8000**  
**Nashville, Tennessee 37243**

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**Supplemental #1**

**November 22, 2017**

**2:32 P.M.**

**Affidavit**

NOV 22 17 PM 2:32

**Supplemental #1**

**November 22, 2017**


**2:32 P.M.**

**AFFIDAVIT**

STATE OF TENNESSEE

COUNTY OF DAVIDSON

Michael D. Brent, being first duly sworn, says that I am the attorney for the manager of applicant named in this Certificate of Need application, or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

By:   
Michael D. Brent

Sworn to and subscribed before me, a Notary Public, this the 22nd day of November, 2017, witness my hand at office in the County of Davidson, State of Tennessee.

My commission expires Sept 7, 2021, \_\_\_\_\_

NOTARY PUBLIC

